The Solicitors' Journal

Vol. 93 June 25, 1949 No. 26

CONTENTS

CURRENT TOPICS

The Landlord and Tenant (Rent Control) Regulations, 1949

Now that the Landlord and Tenant (Rent Control) Act, 1949, is on the statute book it is important for solicitors to familiarise themselves with the procedure before the rent tribunals which will administer some of the main provisions of the Act. The procedure is laid down in S.I. 1949 No. 1096 (the Landlord and Tenant (Rent Control) Regulations, 1949), and the regulations expressly confer on the parties the right to appear by counsel or solicitor at any hearing by the tribunals. The regulations also prescribe certain additional particulars to be included in the register kept by the local authority under s. 5 of the Act. By the combined effect of the Act and regulations, the register will record particulars of the dwelling-house in question, names of landlord and tenant, term of tenancy, period for which payments of rent were made, liability for repairs, rates and insurance, terms as to assignment, under-letting and lodgers, details as to shared accommodation, services provided by landlord, the reasonable rent determined by the tribunal, and any certificate issued by the tribunal under Sched. I to the Act relating to premiums together with any determination made by the tribunal under that schedule. Ministry of Health Circular 59/49 directs that the register shall be available for inspection at the local authority's offices during their normal hours of business. A summary of the main provisions of the Act begins at p. 420, *post*.

Control of Building Operations: New Order

THE Control of Building Operations (No. 13) Order, S.I. 1949 No. 1102, coming into operation on 1st July, maintains the limit of cost permitted for unlicensed work on any single property during the year ending 30th June, 1950, at £100 or, in the case of certain special classes of buildings, £1,000. These special classes are redefined with the principal object of including purposes ancillary to the primary purpose of the buildings, and broadly comprise industrial buildings, farm buildings other than dwelling-houses, educational buildings, office buildings with a floor area of not less than 10,000 square feet, and warehouses and storage buildings with a floor area of not less than 5,000 square feet. Under the new order local authorities and public utility undertakings are still required to obtain authorisation from a Government department for operations whose cost exceeds £1,000.

Builders' Near-ripe Land

THE Central Land Board announce that they have received applications for the benefit of the arrangements for builders' near-ripe land from building firms which are unable to calculate a ration in the usual way by reference to development which they carried out on their own land (or on land held on their own behalf) over a period of at least two years between 1934–39. In these cases, it is proposed to make alternative arrangements. Under these arrangements the total development value of claims on the £300 million made by the firm in respect of their eligible land (see para. 1 of S.1A/NR (Revised)) will be averaged over its total acreage. Payments will then be graded as follows: for the first acre, 100 per cent. of the land's average development value; for the next four acres, at least 75 per cent.; for the next ten acres, at least 50 per cent.; for the next eighty-five acres, at least 25 per cent.; and for all land after the first hundred acres, at least 10 per cent. It is stated that the Board are willing to extend these arrangements to any firm preferring this treatment to the standard ration for which it also qualifies, if they are notified of this within thirty days after receiving from the Board a copy of this leaflet announcement.

Central Land Board: Near-ripe Minerals

THE statement by the Chancellor of the Exchequer in the Commons on 2nd June, 1949, that a mineral undertaker claiming in respect of land which was held by him on 1st July, 1948, for the purpose of winning and working the minerals therein will receive from the £300m. a payment equal to the development value for winning and working minerals of his interest in that land, has been followed by publication of a form of claim under s. 58 of the Town and Country Planning Act, 1947. It was then stated that this will apply whether the mineral undertaker held the land freehold or under a mining lease or licence. It has also been decided that any owner claiming in respect of land which on 1st July, 1948, was the subject of a mining lease or licence will receive from the £300m. a payment equal to the development value for winning and working minerals of his interest in that land. Land as regards which a mineral undertaker was on 1st July, 1948, under binding contract to purchase or take a mining lease or licence will be treated in the same way as land held by a mineral undertaker on that date. "Mineral undertaker" for this purpose does not include a landowner who works minerals only for use on his estate. These decisions apply to England, Wales and Scotland, and effect will be given to them in the schemes for distribution of the £300m. to be made under the English and Scottish Acts. The form of claim (S.1/M) contains useful introductory notes, and consists of a few simple questions to be answered, except that the particulars of lease required by question 6 seem to call for some legal assistance in providing them.

LAW LIBRARY

Planning Permission for Dredging Operations

A RECENT appeal decision by the Minister of Town and Country Planning under s. 17 of the Town and Country Planning Act, 1947, related to the carrying out of operations at various points off the South Coast, for the getting of sand and gravel from the sea bed, title to which rests in the Crown under the Royal Prerogative. Licences permitting dredging operations had been issued by the Commissioners of Crown Lands. An application was submitted to the local planning authority and referred to the Minister for determination whether planning permission was required for any or all of these sites. The Minister decided that the provisions of the Town and Country Planning Act, 1947, did not apply, that planning permission was not required and that development charges would not be payable for any operations taking place beyond low-water mark in areas outside the limits of the jurisdiction of the county. He further ruled that operations in areas beyond low-water mark which nevertheless fell within the administrative boundaries of a local authority (for instance in a tidal estuary falling "*inter fauces terrae*") were in a different category. In these cases the provisions of the Town and Country Planning Act, 1947, would apply.

Joint Accounts

Mr. G. E. HUGHES, of Bath, writing to *The Times* of 16th June, complained of the grave inconvenience and waste of time occasioned by the failure of company secretaries, the Bank of England, and issuing houses to set out the full names and details of shareholdings in joint accounts. It is still the practice of company secretaries and issuing houses, he stated, to address circulars notifying redemption, conversion, and offers of bonus shares to "A. B. Brown and others." He said that the result was that a great deal of unnecessary work is occasioned in the offices of solicitors, accountants and branch banks, whose staffs, relying in many cases on personal recollection, are forced to spend many hours in tracing the accounts to which these notices relate. We trust that secretarial organisations and journals will give full publicity to this complaint, the justification for which other solicitors can corroborate.

Taxation of Trade Profits

THE Chancellor of the Exchequer has appointed a committee under the chairmanship of Mr. J. M. TUCKER, K.C., to inquire into the method of computing net trade profits for the purpose of charging them to income tax and to consider the question of the basis period to be taken in assessing the tax on the profits so ascertained; to inquire into the method of computing net profits for the purpose of charging them to profits tax; and to report upon any alterations of the tax law which may be desirable. The secretary is Mr. E. R. BROOKES, Secretaries' Office, Inland Revenue, Somerset House, W.C.2.

Smallholdings Report

THE first report of the Smallholdings Advisory Council to the Ministry of Agriculture and Fisheries (H.M. Stationery Office, 1s. 3d.) on the administration of Pt. IV of the Agriculture Act, 1947, was recently published. It contains numerous proposals for the improvement of the smallholding system as well as an admirable survey of the relevant statutory provisions. One of the Council's conclusions is that where suitable land cannot otherwise be obtained and it is in the general interests of agriculture that the land should be acquired for smallholdings, there is ample justification for compulsory purchase. On the other hand, the report states, the dispossession of efficient farmers, if carried too far, or so as to cause unnecessary disturbance and injury, would on balance be against the general interests of agriculture. The report also recommends that holdings must be fully equipped and this is not consonant with merely leasing land, which should be resorted to only in exceptional circumstances, for example where really suitable land is entailed or is Crown land and there are difficulties in the way of such land being purchased by agreement or compulsorily. The procedure for compulsory hiring, it is stated, corresponds very closely to the compulsory purchase procedure, and is now laid down in the Agricultural Land (Compulsory Hiring) Regulations, 1949, made under s. 9 of the Agriculture Act, 1947. The report contains a number of informative appendices, including a model tenancy agreement.

Solicitors' War Memorial

ON the 8th July there will take place the ceremony of unveiling the Solicitors' War Memorial, which will be performed by the ARCHBISHOP OF CANTERBURY at The Law Society's Hall in Chancery Lane. The figure of Pallas Athene and the Golden Book of Service under arms and at home form the immediately visible parts of the memorial. It includes in addition, however, a fund of £20,000 to help solicitors, articled clerks and their dependants "who have suffered in body, mind or estate through the war."

Gambling

MORE matter for consideration by those considering the reform of our gaming laws is contained in a report for the year ending 31st December, 1948, issued on 16th June by the Churches Committee on gambling. Expenditure on gambling is undoubtedly falling, as the figures for 1948 show (£650,000,000, as compared with £791,000,000 in 1947 and £1,000,000,000 in 1946). The committee does not consider this decline to be conclusive proof of a lessened interest in gambling, and indeed it is estimated, for example, that the total of those regularly attending dog races has increased. The total figure set out in the report for pools is £69,000,000, £61,000,000 of which is comprised of football pools. Of the stakes in football pools, 36·1 per cent. are over half a crown and less than five shillings. Men are said to spend £1,331,000 a week on football, and women £266,000. Totalisator receipts for dog racing were about £95,000,000, a total decline of about £100,000,000 in two years. The takings on the course through bookmakers are stated to be rather more than the takings of the totalisators. For horse racing the total receipts of totalisators during 1948 were £26,000,000, as against £7,000,000 in 1945, £14,000,000 in 1946, and £21,000,000 in 1947. To the lay observer the figures seem to indicate a problem which admits of the solution of neither total suppression nor approval by means of state lotteries. As social security measures multiply, the human craving for risk-taking would seem to increase in inverse proportion. It may be some comfort to know that such a large part of the volume of betting is confined to half-crown weekly bets.

Recent Decisions

In a case in the Court of Appeal (the LORD CHIEF JUSTICE, and TUCKER and SINGLETON, L.JJ.), on 15th June (*The Times*, 16th June), it was held that a company's balance sheet could constitute an acknowledgment of a debt to take it out of the operation of the Statute of Limitations, the plaintiff having proved that he was one of the unspecified persons to whom the debt was stated in the balance sheet to be owing.

In *In re Hopkinson, deceased; Lloyds Bank, Ltd.* v. *Noel-Baker and Others*, on 17th June (*The Times*, 18th June), in the Court of Appeal (the MASTER OF THE ROLLS and SOMERVELL and JENKINS, L.JJ.), a settlement was announced of an appeal from a decision of Vaisey, J., that a trust of a fund to be established for adult education on the lines of a Labour Party memorandum was not a valid charitable trust. The appeal was dismissed on a promise by the respondents to hand over to the appellants, as trustees, a certain sum to be impressed with a trust for adult education.

In the Divisional Court (the PRESIDENT and BARNARD, J.), on 17th June (*The Times*, 18th June), it was held that under the Maintenance Orders (Facilities for Enforcement) Act, 1920, an English court had jurisdiction to confirm a provisional order which a court of summary jurisdiction in New South Wales, Australia, had made in favour of a wife, not only as to the part relating to maintenance but also as to the part awarding the wife custody of the child. The wife was still resident in Australia.

EXCHANGE CONTROL: THE RELEVANCE OF FOREIGN RESTRICTIONS

THE policy, forced by economic conditions upon modern States, of controlling the export and import of currency and other valuables of a portable nature forms a topic in private international law which may frequently concern solicitors whose practice has a mercantile flavour. Two recent cases before the Court of Appeal, dealing with the position of a banker who holds foreign securities deposited with him for safe custody, suggest that the subject may be of importance to those advising a less specialised type of client. The opposite results of the cases, moreover, point a contrast which, notwithstanding many essential differences in their basic circumstances, and in the principles involved, may be instructive. The substantive claim in each case was for the delivery of the securities to the plaintiff, and each case gave rise to a consideration of provisions of Czecho-Slovak law (enacted before the historical events of the last eighteen months) which appeared to forbid the release of the securities without the consent of the Czecho-Slovak National Bank. In neither case was that consent forthcoming. Both cases exhibit a highly involved state of facts and it is not proposed here to do more than indicate briefly the factors which, as the writer sees it, contributed to the difference in the practical results.

The first question before the court in *Kahler* v. *Midland Bank, Ltd.* [1948] 1 All E.R. 811, was whether the plaintiff, a Czecho-Slovak national formerly resident in Prague but resident in this country since 1939, was in contractual relationship with the defendants, a London bank which had in January, 1939, received for safe custody on account of the Zivnostenska Bank certain bearer securities in respect of shares, admittedly owned by the plaintiff, in a Canadian company. The plaintiff had been at the time of the deposit a customer of the Zivnostenska Bank, and the securities had previously been held by Zivnostenska to his account. On the occupation of Czecho-Slovakia by the Germans, the plaintiff's account had been compulsorily transferred from Zivnostenska to another Prague bank, the Bohemian Bank, which the Germans controlled. Thereupon, also, the defendants received from Zivnostenska a letter requesting that the securities should be placed into the deposit with the defendants of the Bohemian Bank. That letter named the plaintiff as the owner of the shares. The defendants acknowledged to the Bohemian Bank the receipt of the securities for their account by means of a form which again mentioned the name of the plaintiff as the owner of the shares. They, therefore, knew at least from that time on that the depositing banks were acting as agents for the plaintiff. But in spite of this, the Court of Appeal held on the facts that the contractual liability of the defendants as bailees of the securities was to the Bohemian Bank and not to the plaintiff.

The court then considered an alternative contention put forward by the plaintiff. It was said on his behalf that he was entitled as a matter of right *in rem* to delivery of the securities on the ground that, being absolutely entitled beneficially to the shares, he was therefore entitled against all the world to possession of the certificates. The leading judgment is that of Evershed, L.J., and on this head of the plaintiff's argument (which had brought him success in the court below) that learned lord justice pointed out that although the defendants had admitted the plaintiff's ownership of the *shares*, they had not admitted, though requested to do so, that the *certificates* were the plaintiff's property. To succeed, the plaintiff had to prove entitlement not only to the shares, but also to possession of the certificates. If the consent of the defendants' real customer, the Bohemian Bank, was necessary to the passing of the certificates to the plaintiff (and the court's decision on the first of the plaintiff's contentions meant that it was) then he must show either that the Bohemian Bank was bound to give that consent or that the absence of its consent might on the facts of the case be disregarded in an English court.

Now, at all material times, the Czecho-Slovak currency regulations were such as to forbid the transfer or release of foreign securities held in safe custody from or to a Czech resident without the permission of the Czecho-Slovak National Bank. It was common ground that that permission would not have been forthcoming. Evershed, L.J., held that the plaintiff must have known or contemplated from the first that this permission would be required. Though the defendants were not bound by Czecho-Slovak law in one sense, that did not mean that the regulations in question had no application to the case. By reason of them the consent of the Bohemian Bank to the release of the certificates was no mere formality.

Scott, L.J., put the matter in another way but reached the same conclusion. The Czech Government, he said, might be regarded in two capacities. Either the Bohemian Bank could not give the necessary consent to relieve the defendants of their duty of safe custody because that would be breaking the law of Czecho-Slovakia, or the Czech Government could be regarded as having conferred on itself in regard to possession of the shares a title paramount to that of the plaintiff as owner. From this it followed that the plaintiff's claim failed whether the action was on a contract or in detinue.

The plaintiff in *Frankman* v. *Anglo-Prague Credit Bank* (1948), 92 SOL. J. 705, was, on the other hand, successful in his claim for the return of debentures in a Czech company held at the London branch of the defendant bank, whose head office was in Prague. He claimed as personal representative of his mother, who had, in 1935, succeeded to the estate of the original depositor, Dr. Weiner, a national and a resident of Czecho-Slovakia. Dr. Weiner had instructed the bank to buy the debentures for him in London, they being part of an English issue, and the debentures were held for him by the bank's London branch, although the contemporary documents refrained at his request from mentioning the place of deposit. When Dr. Weiner died his successor received from the bank's head office in Prague an acknowledgment that the debentures were held by them in London on her account, and certain conditions of business were furnished to her. Here, it seems, is the crucial distinction between *Kahler's* and *Frankman's* cases, *supra*. In the former there was no contract with the defendants on which the plaintiff could rely; in the latter the contract between depositor and bank was the basis of the action, and on its construction the decision turned.

It will readily be seen that much, if not everything, depended in *Frankman's* case on the place where the material obligations of the contract between the plaintiff's mother and the bank were to be performed, for if the place of performance was Prague, as Cassels, J., had held, then the exchange control law of Czecho-Slovakia which we have already outlined would forbid the return of the debentures without the consent of the National Bank. The Court of Appeal examined in detail the contract as contained in the conditions of business stipulated for by the defendants and acquiesced in by the plaintiff's mother. One of the conditions provided that unless the customer ordered the transmission of the securities at her own expense and risk they were to remain deposited with the bank's correspondent [the London branch], where they were to be subject to the laws of the country where they were deposited. On the other hand a later condition was to the effect that the place of performance was to be considered to be the place of that department of the bank's establishment which had carried out the relevant transaction with the customer. The Court of Appeal felt able, reversing Cassels, J., on this point, to separate the obligation of safe custody of the debentures from the original transaction for their purchase, and to hold that that obligation was being carried out in London by a branch of the bank which could be regarded as a separate department of the defendant's establishment. "The contract

of purchase," says Lord Goddard, C.J., "was undoubtedly governed by Czecho-Slovak law, but thereafter the bank, in fulfilment of their mandate, were holding by their branch or department in London these debentures for safe custody. I think that thereupon the debentures became subject to English law."

There was, additionally, expert evidence before the court to show that, even if Czech law governed the matter, there was nothing in that law to render illegal a transaction of the kind in question between two parties neither of whom was resident in Czecho-Slovakia. The London branch being a distinct entity was not so resident; nor was the plaintiff. In this is shown another important difference from *Kahler* v. *Midland Bank, supra*, for there, although both parties to the *action* were Czech non-residents, one party to the *contract* was in Czecho-Slovakia and so subject to the regulations.

In both *Kahler's* and *Frankman's* cases there is some discussion (confined, so far as the latter case is concerned, to the court below—see (1948), 92 SOL. J. 143) of the extent to which recognition of the exchange control restrictions of a foreign country would amount to enforcement of that country's revenue laws. The enforcement of a foreign taxation Act, for instance, will not be undertaken by the English courts (cf. *Re Visser* [1928] Ch. 877).

With regard to exchange control, however, it seems arguable that the application of this principle is restricted by the terms of the Bretton Woods Agreement and the Order in Council promulgating it (S.R. & O., 1946, No. 36). Both Great Britain and Czecho-Slovakia were parties to the agreement, by art. VIII of which exchange contracts involving the currency of a signatory and contrary to the exchange control regulations of that signatory are to be unenforceable in the territories of any signatory. Cassels, J., treated this consideration as disposing of the objection that the court ought not to recognise the Czech legislation. The Court of Appeal, in *Frankman*, did not have to consider this aspect of the case, but in *Kahler* v. *Midland Bank*, Evershed, L.J., refrained from expressing any view on the scope and effect of the Bretton Woods Agreements Order. The question was left open whether the contract before the court was an "exchange contract" within art. VIII. Evershed, L.J., contented himself with observing that, assuming in the plaintiff's favour that the regulations in question could properly be described as "revenue laws," it would be necessary for the plaintiff, in order to make good the objection indicated, to show that the English courts would not in any circumstances "have regard to" such laws, even though not in any proper sense "enforcing" them. Such a contention was not sanctioned by any authority binding on the court.

After the foregoing was in proof, the writer saw the new sixth edition of Dicey's Conflict of Laws (of which the fifth edition had, by the way, been referred to by Evershed, L.J., in his judgment). The view is there expressed (p. 753) that *Kahler's* case is irreconcilable with principle and with the subsequent decision in *Frankman*. The rejection of Mr. Kahler's claim *in rem* to possession of the share certificates is criticised on the ground that no foreign country can effectively legislate with regard to property outside its jurisdiction. Be that as it may, it remains true that the Court of Appeal in the later case did not, in either of the alternative views they took, need to consider the *enforceability* of the Czech prohibition. It is understood that a further appeal is pending in each case, and the arbitrament of the House of Lords may be awaited with interest.

J. F. J.

RECENT DEVELOPMENTS IN THE DOCTRINE OF CONSIDERATION

IT will be remembered that not long ago, in *Central London Property Trust, Ltd.* v. *High Trees House, Ltd.* [1947] K.B. 130, Denning, J. (as he then was), showed us that the common law has plenty of life left in it yet. We are perhaps inclined at times to think that the common law has nearly reached the full scope of its development and that fundamental alterations must now be made by legislative enactments, and we are encouraged in this view, illogically maybe, by the steady, swollen stream of legislation that pours from the confines of Westminster into an already flooded legal profession. But that case showed beyond doubt that some development in the common law through the medium of decided cases is still possible even in a doctrine so firmly rooted and well established as the doctrine of consideration. The same judge has followed that decision with a similar one in *Robertson* v. *Minister of Pensions* (1948), 92 SOL. J. 603, in which he again gives an illuminating judgment and in which he states once more his views expressed in the former case. Because of the very fundamental nature of these decisions it is thought that a brief survey of the law as it now stands might be of interest, though it must, of course, be remembered that these decisions have not yet been reviewed by an appeal court and until that happens he would be a rash man indeed who would seek to prophesy how the law of England will come to rest on this particular point.

Before discussing these two cases and the authorities upon which they are based it should perhaps be remarked that the binding authority of the *High Trees* case has been doubted and the opinion expressed that Denning, J.'s views on the question of gratuitous promises put forward in that case were merely *obiter*. Two learned contributors to the *Law Quarterly Review* carried on a protracted battle on this point in a number of issues of that journal (see 63 L.Q.R., p. 278, and 64 L.Q.R., pp. 28 and 193). It may well be that the learned judge's views were technically *obiter*—though the arguments for the opposite opinion are undoubtedly strong—and if that is the case then the case of *Robertson* v. *Minister of Pensions, supra*, becomes of greater weight, for there it was clear that the *ratio decidendi* was the principle put forward in the earlier case.

The relevant facts in the *High Trees* case were simple: the landlords of certain property agreed with the tenants that they would accept one half of the rent due under the lease as the tenants were unable to let all the flats which comprised the property on account of the war and were in some difficulty about paying the rent. There was no consideration for this promise. The landlords after the end of the war, when the flats were all again let, sued for the whole rent due under the lease for the two quarters ending December, 1945. Denning, J., found as a fact that the agreement was only intended by the parties to be operative during such time as the war-time conditions existed and that those war-time conditions had ceased to exist at the commencement of the period for which rent was claimed. From this it is clear that it would have been possible for the learned judge to decide the case in that state of the facts alone, and it is for that reason that the remainder of what was said in the judgment has been classed as *obiter*. However, in addition to this finding of fact the learned judge delivered a lucid and cogent exposition of the law regarding agreements made for no consideration which, be it *obiter* or not, cannot but be treated with the very greatest respect. In reviewing the law on this point, he discussed the question both from the standpoint of the common law and from that of equity. It was in the latter that he was able to find a logical precedent for deciding that an agreement of this nature should be binding, subject to certain limitations, and thus to be able to say that that was the law; for where equity and common law are at variance, equity shall prevail. In reviewing the cases at common law, he showed that they had been decided on the assumption that an estoppel came into operation against the landlord (see *Buttery* v. *Pickard* (1946), 90 SOL. J. 80, and *Salisbury* v. *Gilmore*

[1942] 2 K.B. 38). This was, in the opinion of Denning, J., an incorrect way of viewing the cases; they were not really cases of estoppel, as they were not based on a representation of fact—a prerequisite to any estoppel—but were based on a promise of future conduct, which will not suffice (see *Jorden* v. *Money* (1854), 5 H.L. Cas. 185). This being so, it was clear that at common law it was not possible to say that the agreement was binding, and this necessitated a scrutiny of the way in which equity tackled a problem of this nature.

The two cases in equity which throw some light on the problem were *Hughes* v. *Metropolitan Railway* (1877), 2 App. Cas. 439, and *Birmingham & District Land Co.* v. *L. & N.W.R.* (1888), 40 Ch. D. 268. From these two cases it was clear that equity granted relief to a person who had acted on a promise, albeit gratuitous, made to him by another, provided that other knew that he would act on the promise. The equitable doctrine was, perhaps, stated most succinctly by Bowen, L.J., in *Birmingham & District Land Co.* v. *L. & N.W.R.*, *supra*, when he said: "The proposition seems to me to amount to this; that if persons who have contractual rights against others induce by their conduct those against whom they have such rights, to believe that such rights will either not be enforced or will be kept in suspense or abeyance for some particular time, those persons will not be allowed by a court of equity to enforce the rights until such time has elapsed, without at all events placing the parties in the same position as they were before." Upon the authority of these two cases, both of which affect landlords and tenants, and another case in which the principle was extended outside that particular relationship, *Re William Porter and Co., Ltd.* [1937] 2 All E.R. 361, Denning, J., was able to find that the landlord in the *High Trees* case could not sue for the full amount of the rent during the currency of the agreement to accept only half rent even though he had received no consideration for his promise. The promise had been acted on and the landlord had intended that it should be acted upon and that was sufficient.

The importance of the judgment lies in the generality of the terms in which this principle was laid down, for the learned judge refused to be contained within the confines of any particular type of case. "They are cases," he said, "in which a promise was made which was intended to create legal relations and which, to the knowledge of the person making the promise, was going to be acted upon by the person to whom it was made and which was in fact so acted upon. In such cases the courts have said that the promise must be honoured." It does not need much imagination to realise that these words apply to almost any type of case and are wider by far than the scope of any particular branch of the law.

It was said above that the principle was subject to limitations, and the limitations are important. In the cases where the equitable remedy was sought this principle was only invoked to give a defence to a person sued upon the original agreement on the ground that the new agreement to accept something less was made for no consideration; it did not provide a weapon of attack enabling the promisee to sue the promisor but only a shield wherewith the promisee might defend himself from action brought by the promisor.

As if intended by fate to emphasise the generality of the principle laid down in the *High Trees* case the facts in *Robertson* v. *Minister of Pensions* brought the problem before Denning, J., in a field far removed from that of landlord and tenant and indeed from any of the type of cases in which one might reasonably have expected the problem to arise again. In that case the plaintiff, a colonel in the army, was injured in an accident in December, 1939, while on military service, and in July, 1940, was found unfit for general service and graded in Category B. In March, 1941, he wrote to the War Office requesting that the question of attributability in regard to the disability should be settled. On 8th April, 1941, the War Office replied that the plaintiff's disability had been accepted as attributable to military service. On the faith of that assurance the claimant took no steps to obtain independent medical opinion or to secure possession of the X-ray plates relating to the accident, and these were no longer available. Denning, J., held that Colonel Robertson was entitled to rely on the War Office letter and that the authorities could not later turn round and say that the injury was not attributable to war service notwithstanding the fact that the statement was wholly gratuitous. The case fell within the principle "that if a man gives a promise or assurance which he intends to be binding on him and to be acted on by the person to whom it was given then once it is acted on he is bound by it." This, it would seem, must dispel any doubts that had arisen as to whether or not the judgment given in the *High Trees* case represented the law, for there is no possibility of saying that the principle enunciated in *Robertson* v. *Minister of Pensions* was not necessary for the decision of that case.

If these decisions do in fact represent the law the recommendation made by the Law Revision Committee that "a promise that the promisor knows, or reasonably should know, will be relied upon by the promisee shall be enforceable if the promisee has altered his position to his detriment in reliance on the promise" has thus been achieved, at any rate in part. There can be few who would not agree that this is a wholly excellent result, for it means that contracts made for no consideration and which previously could not be enforced and yet which all were agreed should in common morality be binding must now be honoured if they come within the scope of the agreements here discussed.

P. W. M.

RENT CONTROL ACT, 1946: JUSTICE WITHOUT JURISDICTION

"We are here to fix fair rents for landlords as well as tenants." These words of the chairman of a metropolitan rent tribunal must have been read with deep satisfaction by all who desire to see justice done, and that includes all who themselves are just in their dealings with others.

But, in seeking to do justice, such tribunals can only so do if they have jurisdiction given to them for the purpose; and, in my submission, the tribunal in question had no such jurisdiction in the case of the references then before them. Let us, therefore, consider the facts.

The case was very fully reported in the *Daily Express* of 30th October, 1948, under the title, very appropriate in the circumstances, "Portrait of a Perfect Gentleman": doubly appropriate indeed, not only because he was a perfect landlord but also because his actual portrait, displaying a face of obvious benignity, was given for all to contemplate.

He asked the tribunal to fix the rents for his 137 flats extending over thirteen different houses. He did not ask for an increase; he just wanted the tribunal to say what the rents should be.

Each flat consisted apparently of a room with its own kitchenette, the flat being very well furnished and the kitchenette being provided with all modern conveniences. There was a telephone installed on each landing. No extra charge was made for baths. The landlord, moreover, paid a garden rate in respect of some of the houses, so that the tenants there could use nearby tennis courts. The tenants in all the houses were each paying 32s. 6d. a week, and all of them were entirely satisfied.

The tribunal, or some or one of them, clearly inspected all the flats; for the chairman found himself able to say: "The rooms are small, but very comfortably furnished and the kitchenettes contain every convenience. They are some of the best rooms we have seen." He added: "This man is the perfect landlord. In all these houses we have not found one dissatisfied tenant."

The tribunal then proceeded to make an "order that the tenants, who"—as already stated—"are charged 32s. 6d. a week, must now pay about 5s. more," i.e., about 37s. 6d. a week.

Entirely just, no doubt. But what power had the tribunal to interfere with the contractual rents by making any such order? Before fixing those contractual rents with his tenants, the landlord could perfectly well have taken advice as to what he should charge. If he did not, he had no one but himself to blame for undercharging. It was not for the tribunal to help him because he had failed to help himself.

The provisions of the Act itself are entirely clear and show precisely the limits of a tribunal's jurisdiction and powers. Let us, therefore, see what the Act lays down.

In the case of every contract of tenancy of either a house or part of a house for occupation as a residence, in any district wherein the Act has been put in force by the Minister of Health under s. 1, at a rent which includes payment for the use of furniture or (i.e., and/or) for services, either party thereto or the local authority can, by virtue of s. 2 (1), refer that contract to the tribunal of the district.

On any such reference being made to the tribunal, what are their powers? The answer is given by s. 2 (2), which lays down that "The tribunal shall consider it and . . . shall *approve* the rent payable under the contract" (i.e., what I have above called the contractual rent) "or *reduce* it or may . . . *dismiss the reference.*"

This s. 2 (2)—as shown by s. 2 (3), to which I will refer in a moment—deals solely with a first reference of a contract of tenancy, and it will be observed that it gives tribunals no power to increase the rent.

The only power given to a tribunal to *increase* the rent on a first reference of a contract of tenancy is that given by s. 2 (4), which applies to "any" reference of a contract the rent whereunder includes "payment for services." In the case of any such contract the tribunal are thereby given express power, even on a first reference, to increase the rent by "an amount in respect of" the "increase since 3rd September, 1939, in the cost of providing such services."

Apart from s. 2 (4), the only power given to tribunals to *increase* the rent of a tenant is that given by s. 2 (3), but this only applies to cases where there has already been an earlier reference of the contract of tenancy and the rent of the relevant premises, as then fixed by the tribunal, has been entered in the register of the local authority under s. 3 and where, thereafter, either party or the local authority has or have referred the case again to the tribunal "for reconsideration" of the rent so entered "on the ground of change of circumstances."

In the case here under consideration the landlord's references were obviously all first references and s. 2 (4), just as obviously, was not relied on by the landlord.

The tribunal, therefore, however anxious they were to be just, and though doubtless perfectly justified in their view that the landlord had agreed to contractual rents which were lower than what the facts would well have warranted, had no power whatsoever to increase any of such rents and no power, therefore, to make the order which they in fact made; and, if the tenants or any of them were minded to apply to the High Court for an order of certiorari to quash that order, there can be little, if indeed any, doubt but that they would succeed. Compare the judgments of the High Court in the *Kendal Hotels* case of 4th March, 1947, in [1947] 1 All E.R. 448, the *Bedrock Investments* case of 13th May, 1947, in [1947] K.B. 984 (upheld in the Court of Appeal on 16th July, 1948, in *The Times* of the following day), the *Langford Property* case of 10th July, 1947, in *The Times* of the following day, and the *Ashton* case of 29th May, 1948, in *The Times* of the following day, and 92 SOL. J. 250.

Even without so doing, and assuming the flats in question to come within the protection of the Rent Restrictions Acts, if the tenants or any of them were minded to refuse to pay the increase which the tribunal had thus ordered them to pay, the landlord—by reason of s. 7 of this Act of 1946, preserving such tenants' rights under the Rent Restrictions Acts, 1920–1939 (save only in regard to ss. 9 and 10 of the Act of 1920 which here are immaterial)—would, in my submission, be unable to recover such increase at the hands of any court.

Justice is always most laudable; but those who seek to execute and ensure it must first be expressly empowered so to do. That was not the case here.

L. G. H. H.-S.

Taxation

INCOME TAX: EXPENSES UNDER SCHEDULE E

THE rule as to expenses which may be deducted in assessing the emoluments of an employee or the fees of a company director to income tax under Sched. E is so much more stringent than that relating to expenses allowable against the profits of a person working on his own account or in partnership, assessed under Sched. D, as to cause serious injustice as between different classes of taxpayers. It is becoming not unusual for a solicitor to be called upon to explain to his client why an expense which has to be incurred in connection with an employment or directorship is not taken into account in assessing emoluments to tax, and it may be useful to examine the principles of law bearing on the matter.

The rule in question is r. 9 of Sched. E, which allows the deduction of expenses incurred wholly, exclusively and necessarily in the performance of the duties. In the first place it is to be observed that the rule requires that the expenditure shall have been incurred "wholly, exclusively and necessarily," whereas the corresponding rule under Sched. D only requires that expenditure shall be incurred "wholly and exclusively." The presence of the word "necessarily" in the Sched. E rule results in the disallowance of expenditure incurred wholly and exclusively by an employee in those cases where it was not necessarily incurred, even although it would have been properly allowable under Sched. D. Thus, in the leading case of *Simpson* v. *Tate* [1925] 2 K.B. 214, a county medical officer of health sought to have deducted, in assessing his salary to tax, subscriptions which he paid, and which it was admitted to be desirable that he should pay, to certain medical and scientific societies in order that, by means of their meetings and published transactions, he might keep himself up to date on all medical questions of public health. It was held that, as the expenditure was not necessarily incurred, it was not allowable. This difference between the rules is frequently emphasised, but the more important part of the Sched. E rule is probably that which requires the expenditure to have been incurred "in the performance of the duties," and this point is examined in some detail below.

Expenditure which is incurred by an employee in fitting himself, or in keeping himself fit, to perform his duties, is not allowed, even if he incurs it "necessarily." Thus, in *Blackwell* (*Inspector of Taxes*) v. *Mills* (1945), 26 Tax Cas. 468, a student in the research laboratories of a company was required under the terms of his contract of employment to attend classes in preparation for a university degree so as to fit himself for the performance of the duties which would be required of him. Doubtless in this case it was necessary for him to incur the expenditure, because his contract so required, but as it was incurred in fitting himself to perform his duties, and not in the actual performance, the expenditure was disallowed. This case makes it clear that expenditure cannot be made allowable simply by the device of making it a condition of employment; there is the further requirement that it must be incurred in performing the duties. It is on this principle that trade union subscriptions, which many workers are required to pay as a condition of their employment, are not allowable deductions in assessing the emoluments of their employment.

The question of travelling expenses is another which causes dissatisfaction among employee taxpayers. The expenses of travelling from home to place of work are not allowed either to persons assessed under Sched. D or to those assessed under Sched. E, with the minor exception, made only in relation to Sched. E, of additional travelling expenses (up to a maximum of £10 per annum) incurred owing to a change in place of residence or employment on account of war conditions. But the real grievance of the taxpayer arises in those cases where he has two or more places of work and he is compelled to travel from one to another. If an employee is travelling in connection with one employment, such as a salaried commercial traveller employed by one firm, the expenses are necessarily incurred in the performance of his duties and are allowable. But if he is travelling from one place of work to another place where he is employed under a separate contract, no allowance is given, although it may be impossible to carry on his two or more jobs without such travelling. Thus, in *Ricketts* v. *Colquhoun* (*Inspector of Taxes*) [1926] A.C.1, a barrister practising in London held an appointment as Recorder of Portsmouth and was obliged to incur the expense of travelling from one place to the other, and of putting up at hotels in Portsmouth. It was held that his travelling expenses could not be allowed in assessing his emoluments as Recorder under Sched. E, because he did not incur them in the performance of his duties. A similar situation arises in the case of a solicitor who practises in one town and travels to another where he holds an appointment as clerk of the justices (*Cook* v. *Knott* (1887), 2 Tax Cas. 246).

A recent case (*Bolam* (*Inspector of Taxes*) v. *Barlow* (1949), Tax Leaflet 1479), furnishes one more instance of the operation of the rule. An employee of a water board was required to live reasonably close to his place of employment, and his duties continued after office hours at his residence, where his employer had installed a telephone. The employee claimed that as he was not free to choose his place of residence in a cheaper district, the excess cost of living where the terms of his employment required should be allowed as a deduction from his salary. Croom-Johnson, J., held that there was no evidence on which the Commissioners could come to the conclusion that the excess cost was expenditure incurred wholly, exclusively and necessarily in the performance of the duties, and disallowed the deduction. The learned judge pointed out that a number of cases of this kind have produced extremely hard results, but that the remedy for getting rid of those hard results was not an appeal to the courts, but to the Legislature for amendment of the law.

Until recently it has often been possible to mitigate the harsh consequences of r. 9 by arranging for the employer to defray expenses of the employee which, if incurred by the latter, would not rank for relief. Such payments, if wholly and exclusively for the purpose of earning the profits of the employer's business, would be proper deductions in assessing the employer's profits to tax. However, this means is no longer open in cases of employees earning £2,000 a year and upwards and of company directors, regardless of how large or small their fees may be. The reason is that in the case of such employees and directors, Pt. IV of the Finance Act, 1948, regards expenses allowances and benefits in kind as part of the employee's or director's remuneration until he is able to prove that the expenditure falls within r. 9 of Sched. E. The difficulty arises in an acute form in the case of a person who is a director of more than one company. He may be compelled to travel from one place to another to perform the duties of his various directorships, but now, if his companies allow him travelling expenses, he is assessed to income tax on the amounts so allowed, notwithstanding that he may have paid them away entirely, and he has no means of avoiding assessment since the expenditure does not fall within r. 9. In consequence, the more journeys he makes the more tax he will pay, although his emoluments are not in any way increased thereby. If the total of fees which he collects reaches only a modest figure he will be paying heavily for performing his duties.

C. N. B.

Company Law and Practice

THE SHARE PREMIUM ACCOUNT

As a result of a recommendation of the Cohen Committee it was provided by the Companies Act, 1947 (s. 56 of the Companies Act, 1948), that upon the issue of shares at a premium the appropriate amount representing the additional sum above par value subscribed should be transferred to an account to be called "the share premium account" which may be applied as mentioned below but otherwise can only be reduced in accordance with the provisions of the 1948 Act as to reduction of share capital. The purpose of the above provisions is to reinforce the principle that it should not be possible to return to an investor by way of dividend moneys subscribed as capital.

The share premium account may be applied—

(*a*) in paying up unissued shares of the company to be issued to members as fully paid bonus shares; or

(*b*) in writing off—

(i) preliminary expenses; or

(ii) the expenses of, or commission paid or discount allowed on, any issue of shares or debentures of the company; or

(*c*) in providing for the premium payable on redemption of any redeemable preference shares or any debentures of the company.

Section 56 has retrospective effect so as to relate to an issue of shares at a premium made prior to 1st July, 1948, subject to the proviso that any part of the premium which had been so applied that it did not on 1st July, 1948, form an identifiable part of the company's reserves is to be disregarded in determining the sum to be included in the share premium account. This retrospective aspect of s. 56 gave auditors a few headaches but on the whole gave rise to little difficulty, the position in most cases being that past premiums had been so treated as not to form an identifiable part of reserves.

The section is simple to operate in the case of an issue of shares at a premium for cash, but the full extent of the section was not immediately realised and as a result a number of company reconstructions or amalgamations have been put through without taking s. 56 into consideration sufficiently. Upon a reconstruction or amalgamation by acquisition of assets it is common to sell the undertaking and assets of the company or companies concerned at book values (goodwill usually having been written down to *nil*) in exchange for shares in a new company to a like nominal value, and such a procedure clearly involves the issue of shares at a premium where (as is normal) market value is in excess of book value. Upon an amalgamation by acquisition of shares it is common to make a comparative valuation of the shares in the respective companies, to fix the nominal capital of the new holding company at the total of the authorised capitals of the companies to be amalgamated (thus obtaining full relief from capital duty under s. 55 of the Finance Act, 1927, as amended) and to apportion the nominal capital (or part thereof) in accordance with the comparative valuation; here again no reference is made to actual values (except for the purpose of comparative valuation) and an issue of shares at a premium is likely to occur. Upon a simple reconstruction by acquisition of shares a premium element will also be present, unless nominal capital is fully written up. Upon an acquisition of the issued share capital of a company by an existing company in exchange for shares it is common to work on the basis of comparative valuation and here again a premium element is likely.

Section 56 applies in any case where shares are issued at a premium, whether or not the issue is made for cash, and it

makes no difference in the case of an issue otherwise than for cash that no cash value has been placed upon the assets acquired and that, therefore, it is not possible from the relevant agreements to ascertain the amount of the premium. Many practitioners appear to have assumed that the section applies to an issue of shares otherwise than for cash only in a case where the consideration is stated as being £x to be satisfied by the issue of fully paid shares equal in nominal amount to £(x – y), but reference to the wording of the section makes it clear that this is not the case; furthermore any such interpretation would render evasion so simple as to make the section of no practical value in relation to an issue of shares otherwise than for cash. The key wording leading to the above conclusion is italicised in the following extract from s. 56 (1), viz.:—

> "Where a company issues shares at a premium, whether for cash *or otherwise*, a sum equal to the aggregate amount *or value* of the premiums on those shares shall be transferred to an account, to be called 'the share premium account' . . ."

The words "or otherwise" make it clear that an issue of shares otherwise than for cash may be an issue of shares at a premium within the meaning of the section, while the words "or value" can only be given meaning by reference to a case where some valuation is necessary (as distinct from a simple calculation of "amount"), i.e., to a case where no cash value is put upon the assets to be acquired in exchange for the shares.

In a case where no cash value is put upon the assets acquired in exchange for shares it next falls to be considered what is the principle to be adopted in deciding whether or not the shares have been issued at a premium. It is possible to seek some interpretation based by way of contrast on the meaning of the phrase "issued at a discount" in s. 57, but it is considered that the wording of ss. 56 and 57 differs in too many material respects for any such interpretation to be of value. It is suggested (albeit without legal authority) that, where a *bona fide* valuation (or a *bona fide* estimate of value) of the assets to be acquired is made by or on behalf of the directors of the company and the shares issued are equal in nominal amount to the value thus arrived at, it will not be permissible to contest that valuation (or estimate) in order to show the existence of a premium element. If no valuation (or estimate of value) has been made at or before acquisition —a case which may well arise—it will be necessary for it to be made so as to ascertain whether or not there has been an issue of shares at a premium and, if so, the value of the premium; here again, once the value of the premium has been settled and the amount entered in the company's books as a credit to the share premium account, it is thought that as a general rule it will not be permissible to question the amount, but possibly this rule would not apply if the valuation (or estimate) can be shown to have been erroneous owing to an omission to include certain of the assets acquired. It is thought that the court will not be prepared to listen to argument as to whether a particular asset is worth £x (as valued or estimated by or on behalf of the directors) or more or less, but would be prepared to take some action if it were shown that assets had been omitted from the valuation (or estimate) in arriving at the value of the property acquired.

The question of "pre-acquisition profits" in the case of an acquisition of a business is a complex one to which the Companies Act, 1948, gives little guide beyond an obscure reference in sub-para. 15 (5) of Sched. VIII, but this sub-paragraph apparently relates only to holding companies which do not submit group accounts and in any case only concerns the question of whether or not pre-acquisition profits can be treated in the holding company's accounts as revenue profits; it does not follow that profits are not distributable merely because they are not to be treated as revenue profits. It is clear that, where a company acquires in exchange for shares the whole of the undertaking and assets, or the whole of the issued share capital, of another company, the pre-acquisition profits of the latter company form part (directly or indirectly) of the assets going to make up the figure which in the former company's accounts is comprised of (*a*) nominal capital issued, and (*b*) premium element (if any) credited to the share premium account; it follows, therefore, that at the outset pre-acquisition profits cannot be distributed without involving a reduction of capital or of the share premium account. The words "at the outset" in the last sentence are necessary because at a later stage an increase in value of assets might give rise to a surplus which on revaluation would permit the pre-acquisition profits to be distributed or in the alternative the retention of post-acquisition revenue profits might permit the distribution of an equivalent amount of pre-acquisition capital profits, although the latter procedure might give rise to tax difficulties and should not be employed without most careful consideration.

The effect of s. 56 upon pre-acquisition profits is of considerable importance and must be considered in every relevant case, including in particular any scheme of reconstruction or amalgamation. The freezing of pre-acquisition profits may not be a serious matter and in any case it has for many years been regarded as good accountancy practice, but in some cases its effect may be serious. In certain classes of company (notably shipping companies) profits fluctuate considerably over a period of years and it is common practice in good years to set aside a proportion of profits to a dividend equalisation account in order to enable dividends to be maintained in bad years—the freezing of pre-acquisition profits would thus freeze any balance in the dividend equalisation account and deprive the company of its use for the purpose for which it was created. Another effect, of course, may be the freezing of pre-acquisition capital profits, out of which tax-free capital distributions, not liable to sur-tax, might have been made.

The provisions of the Companies Act, 1948, relating to the reduction of the share capital of a company apply as if the share premium account were paid-up share capital of the company, but it is not clear what principles will be applied by the court in considering an application for reduction of the share premium account. *Prima facie* the reduction of the share premium account is not a matter of concern to creditors since there is no question of any reduction of uncalled capital, but, where the reduction is sought so as to enable a distribution of pre-acquisition profits, the case is not dissimilar to one where a reduction involves the payment to members of paid-up share capital, and s. 67 (2) accordingly applies. It is not easy to visualise circumstances in which a member could claim to be adversely affected by a reduction of the share premium account; possibly a trust holding might be adversely affected in so far as one result of a reduction would be to permit in effect capital to be returned by way of dividend to the detriment of the remainderman, but this argument is not strong since the share premium account can lawfully be used in the payment up of unissued shares of the company to be issued as fully paid bonus shares, and a bonus issue has a corresponding effect so far as the remainderman is concerned. Up till now the main question to be answered by the court has been: "Is there any good reason why the reduction should not be approved?" but it is suggested that in the case of an application for reduction of a share premium account an equally important question will be: "Is there any good reason why the reduction should be approved?"

It cannot be over-emphasised that s. 56 must be carefully considered in all cases where shares are issued otherwise than for cash and in particular in cases of reconstruction or amalgamation.

J. W. M.

By an order dated 15th June, which is to come into force on 1st July, the Farnham and Aldershot County Court is to be transferred from Circuit No. 51 to Circuit No. 48.

The Double Profits Tax Agreement with the Irish Republic, which was signed on 18th May, was published on 17th June as a Schedule to a Draft Order in Council.

A Conveyancer's Diary

DEFECTIVE EXECUTION OF POWERS—II

IT is now time to consider the decision in *Re Hambro* [1949] 1 Ch. 111; W.N. 181, in some detail. By two settlements made in contemplation and in consideration of the marriage of H and W, trust funds were settled in trust for the issue of the marriage as H and W should by deed with or without power of revocation and new appointment appoint, or as the survivors should by deed or will appoint, and in default of appointment upon trust for the children of the marriage. There were two sons and two daughters of the marriage. By a deed of appointment executed in 1936 H and W appointed the trust funds among their four children in unequal shares, reserving to themselves power to revoke or vary all the appointments (except that in favour of one of the sons), such power to be exercised "by deed during their joint lives or by the survivor during his or her life." W died without having joined in exercising this power of revocation and variation of the appointments already made; but H, who survived her, by his will purported "in exercise of the powers conferred on me by the two settlements" to appoint the whole of the trust funds to the two sons, to the exclusion of the daughters. The daughters had been provided for by H during his lifetime, but it does not appear that this circumstance was relied upon at either of the hearings; it would in any case seem to be irrelevant in the light of the facts in this case.

The question which the court was asked to determine was whether the appointments made by H in his will operated as a revocation and variation of the earlier appointments made by the deed of 1936 in favour of all the children. It was pointed out in argument that this question really involved two questions, each of which had to be answered in the affirmative if those who desired to rely on the appointments made in H's will were to succeed, the two questions being (1) whether equity will validate or "aid" a revocation by will which should have been made by deed, and (2) whether an appointment which is not expressed to be in revocation of a previous appointment can be regarded in equity as operating as such a revocation; but as the sons failed on the first of these questions in both courts, the second never arose for decision. It may, however, be said in passing that, in general, if a power to revoke an existing appointment and make a fresh appointment exists, the power of revocation may be held to have been well exercised in the absence of any reference in the instrument purporting to exercise it to the existence of the power, provided that a sufficient indication of an intention to exercise the power can be drawn from the instrument as a whole. Since in this case a power to revoke or vary all the appointments (except one) therein made had been expressly reserved in the deed of 1936, it would *prima facie* appear that H's will would have been regarded as a revocation of the earlier appointments, if it had not been for the difficulty that the latter instrument was defective from the point of view of form.

On this question the judgment of Roxburgh, J., is very short. He referred to the submissions made on behalf of the sons that the will of H operated to exercise the power of revocation reserved by the earlier appointment because (1) it was intended so to operate, and (2) the doctrines relating to the defective execution of powers applied to defective execution of powers of revocation, and then went on as follows:—

> "Although it would be extremely difficult to reduce to a logical system the various cases relating to defective execution of powers . . . I should not shrink from the attempt if I thought that it would help me to decide this case. But, after further reflection, I have come to the conclusion that, as I am in any event breaking new ground, I should not be prepared to transplant these doctrines if the result would be to divest vested interests by the process of treating a will which has no operation until death as equivalent to the exercise by the donee of a power to revoke by deed during his life. Such a process would, in my judgment, do violence to good language and good sense."

If the apparent qualification ("if the result would be to divest vested interests") is disregarded for the moment, the effect of this decision is far-reaching; if a power is reserved to revoke an existing appointment in a particular manner, an attempt to revoke the existing appointment expressed in some other manner (e.g., by will if a deed is required) will not be aided in equity. This, if one may say so with respect, is excellent good sense; indeed, a decision the other way would run into immediate difficulties in regard to the requirement of the presence of good consideration of which I wrote last week. If equity is called in to aid an instrument exercising a power of appointment, the requirement that there should be good consideration is satisfied immediately it is ascertained that the appointee is a person whom the donee of the power is under some sort of obligation to provide for; but if the doctrine of aiding is extended to the execution of powers of revocation, there are two classes or categories of appointees or beneficiaries to be considered, the persons in whose favour the original appointment was made, and the persons who will benefit if that appointment is treated as revoked; and both may well be persons whom the donee of the power is under an obligation (perhaps an equal obligation) to provide for. This, indeed, was the case in *Re Hambro*, all the appointees being children of the donees of the power.

It would undoubtedly have been useful to have such a rule as that which Roxburgh, J., sought to introduce for the purpose of curbing any extension of the equitable doctrine of aiding the defective execution of powers laid down once and for all. But this was not to be. The Court of Appeal (see [1949] W.N. 181) approached the problem from another angle and held that the case was one where the manner in which the power of revocation should be exercised was of the essence of the power, within the *dictum* in *Cooper* v. *Martin* (1867), L.R. 3 Ch. 47, at p. 57, to that effect which was quoted last week. To arrive at this conclusion necessarily involved the construction of the two marriage settlements and the deed of 1936, and it is difficult to say, until a full report of the judgments is published, how the court arrived at the construction which was in fact reached. What is to be regretted is that the court should have preferred to avoid the issue of principle implicit in the decision of Roxburgh, J., with the result that the latter's judgment on an interesting point has become mere *dictum*. One cannot help thinking that Jessel, M.R., or some other such stalwart of the past, would gladly have accepted the invitation to grapple with the problem as one involving a decision of general application.

As it is, those who have to advise on the question whether the defective execution of a power of revocation will be aided in equity will have to draw such comfort as they can from the judgment of Roxburgh, J., debilitated in authority as it has become. Feeling as I do, with all respect, that that judgment is in principle right, I think a note of warning should be sounded regarding the qualification which the learned judge put on the generality of his words. The result of the revocation of any power must always be to divest vested interests, whether those interests are vested by reason of a prior exercise of a power of appointment or of a limitation in default of appointment contained in the instrument creating the power; at least, I can think of no circumstances where such would not be the case. The fact that vested interests are to be divested is not so much a circumstance to be looked for in order to see whether the principle that equity will not aid the defective execution of a power of revocation is to apply or not as a factor making it in all cases desirable that the principle should not be applied at all.

"A B C"

Landlord and Tenant Notebook

LANDLORD AND TENANT (RENT CONTROL) ACT, 1949

I—NEW STANDARD RENTS: KEY-MONEY

THE first two subsections of the first section of the new Act deal with the determination, by tribunals constituted or to be constituted under the Furnished Houses (Rent Control) Act, 1946, of new standard rents of dwelling-houses let on a letting beginning after 1st September, 1939 (which means, I take it, that the term of the tenancy must have commenced after that date though the agreement may have been made earlier), which letting directly or indirectly (i.e., because apportionable) determined that rent. An application may be made by either landlord or tenant (not, as in the case of furnished dwelling under the 1946 Act, by the local authority) —but the application is an application to determine what rent is *reasonable* for the dwelling-house, and it is only when the tribunal's answer is a figure lower than that of the old standard rent that, as from the date of determination, a change is made. The rent which is reasonable for a dwelling-house is, by subs. (4), the rent which is in all the circumstances reasonable on a letting of that dwelling-house on the terms and conditions, other than those fixing its rent, on which the dwelling-house is let at the time of the application (and, by a proviso to subs. (1), no further applications can be made). The two following subsections direct tribunals to disregard premiums which may have been paid to the landlord, and to disregard the rent of any controlled dwelling-house comprising that in question, but which has not been dealt with under the section; but there is no guidance on what facts are to be considered circumstances affecting reasonableness.

The above attempts to reproduce the substantial effect of the "new standard rents for old" provisions in s. 1; other subsections provide for cases in which a house is let at more than the old standard rent at the time of the application (it will be remembered that increases may be imposed in respect of rates in some cases, or in respect of improvements) (subs. (3)); for the exclusion of properties managed by housing associations within the meaning of the Housing Act, 1936 (the definition will be found in s. 188 (1) of that statute), or subject to a limitation of rent imposed by legislation other than Rent Act legislation (e.g., the Building Materials and Housing Act, 1945, s. 7) (subs. (7)); for substituting maximum rent for the "first letting" rent when a progressive rent is reserved (this makes the new statute consistent with other Rent Act legislation: see s. 12 (1) (*a*) of the 1920 Act) (subs. (8)).

It will be convenient next to mention s. 4, which deals with apportionment in cases in which s. 1 applies. As may be expected, effect is to be given to the power to determine a new standard rent if no apportionment has yet been made, and any existing or future apportionment may be varied: but rent accrued due before the determination of a new standard rent is not to be affected.

What this legislation will achieve remains to be seen. From the point of view of the practitioner, who may have to advise and argue, the failure to define "reasonable rent" is regrettable. This was pointed out when the Bill was introduced (see 93 SOL. J. 20) and, more vigorously, on the occasion of the Commons debate on its Second Reading (*ante*, p. 98). It is difficult to say to what extent any tribunal may be influenced by the consideration that the house compares favourably or unfavourably with other houses let at different rents, and to what extent the fact that the landlord is or is not making a good thing out of the letting will be considered relevant. But one may suppose that the occasion for the legislation will be present in the minds of all concerned: an unexpected shortage of accommodation, in some areas, enabled some landlords to take uncontemplated advantage of the September 1939-or-first-after norm.

Amendments introduced to enable some landlords who, owing to war conditions, had let their houses at very small rents which had become standard rents were rejected; and while the heading of the new measure deals with the point in neutral language and s. 1 (1) does, as mentioned, entitle a landlord to apply to the tribunal for a determination of what rent is reasonable, there is little advantage to be gained by such a step. If the risk of a reduction should be negligible, a determination that the rent is reasonable or is less than what is reasonable may give a landlord some freedom from anxiety, or an answer on merits to a tenant who complains that his dustbin wants a new lid, but that is about all.

The second and third sections, together with Sched. I, deal with what is commonly called "key-money" and, as a result of one proposal to amend, premiums on assignment are now made illegal *sub modo*, and recoverable.

Section 3 is concerned with excess over reasonable price of any sum paid for the purchase of furniture, fittings or other articles, which is to be treated as a premium (and with a right to a written statement of price demanded); but s. 2 and Sched. I enact an elaborate code, of which no more than an outline can be given in this article.

Part I of that Schedule provides for "adjustment" in the case of premiums paid *to landlords* before 2nd June, 1949. A tenant may apply to the tribunal for a certificate that a premium paid by him or a predecessor of his has not been fully repaid or recovered. The position then varies according to whether the reversion has changed hands since the payment, but *before 25th March*, 1949, for money or money's worth. If it has, the tribunal certify the fact, and the tenant acquires a right to recover, from the recipient of that premium, an amount arrived at by the following arithmetical calculations. First, ascertain the "relevant date": this is, in the case of a term of years for more than seven years, the expiration date; in any other case, seven years from the commencement, etc., of the term. Then, find the "rental equivalent": this is the unrecovered premium payment divided by the number of rent-periods (periods for which payments of rent are made) between the commencement, etc., of the term and the aforesaid relevant date. Next, take the number of rent-periods between the date of the tribunal's determination of the reasonable rent and the relevant date. The amount which the tenant is entitled to recover is now ascertained by multiplying the rental equivalent by the last-mentioned number of rent-periods.

When there has been no transfer of the reversion for valuable consideration between 25th March and 2nd June, 1949, the tenant's remedy is a reduction of rent by the amount of the rental equivalent.

To qualify for repayment, application to determine must be made before 2nd June, 1950. The new restrictions on premiums for an *assignment* are qualified by permitting apportionment of outgoings, payment of amounts *reasonably* incurred by the assignor in carrying out *structural* alterations or providing or improving irremovable fixtures, payment of what the assignor may himself have reasonably paid to a previous assignor in respect of such alterations and fixtures, and payment of a reasonable amount for goodwill in the case of combined premises. The respective provisions for dealing with illegal premiums are limited to those paid after 25th March, 1949, and if the tenancy agreement providing for payment of a premium now rendered recoverable was entered into between then and 2nd June, it is merely made voidable by either party.

A different set of provisions (Pt. II of Sched. I) authorises assignors to obtain premiums in cases in which they paid premiums to their landlords. More arithmetic is called for. One again ascertains the "relevant date," and the period between the assignment and that date. One then takes the period from commencement of tenancy to "relevant date." The recoverable amount is a proportion of the premium equal to the ratio between those two periods.

R. B.

HERE AND THERE

IN THE HOUSE OF LORDS AGAIN

FOR the first time for more than a year the House of Lords has sat judicially to hear the argument of an appeal, and that in quite unusual strength. To begin with, the Lord Chancellor presided for the first time (if I remember aright) since he delivered the leading opinion in *Baxter* v. *Baxter* [1948] A.C. 274. Ranged on either side of him were my Lords Simon, Greene, Normand, Oaksey, MacDermott and Radcliffe, a shining constellation. I don't think it is merely the spectacle of the unfamiliar that makes Lord Simon seem somewhat out of place elsewhere than in the chair. Are the side benches too narrow to accommodate his tall figure? Is it that habitual air of authority about him? Or what? Lord Radcliffe in the junior place is not wanting in an air of authority which, indeed, produces the impression of several added inches to his stature. Yet so sudden has been the transition from "my learned friend" to "my Lord" that Sir Walter Monckton, so often in the same cases as he in the past and now appearing in this appeal, must have been hard put to it to remember the difference.

NEW LAW FOR OLD

THE appeal for hearing, *Hill* v. *William Hill* (*Park Lane*), *Ltd.*, is a brave attempt to reverse forty years of settled gaming and wagering law embodied in the decision in *Hyams* v. *Stuart King* [1908] 2 K.B. 696. Since in *Bourne* v. *Keane* [1919] A.C. 815 the House, under the bold leadership of Lord Birkenhead, diverted the stream of authority, in a religious matter, from the channel in which it had flowed for over a hundred years, those who would challenge the wisdom of the past have taken much heart. In the *Fibrosa Spolka* case [1943] A.C. 42, the Greater War and the invasion of Poland gave occasion to correct the long-standing error (as it is now held) in *Chandler* v. *Webster* [1904] 1 K.B. 443, which arose from the illness of Edward the Peacemaker and the postponement of his Coronation. Against the background of what strangely different worlds were those two cases argued. Not always, however, is the word of our fathers reversed, for only last month in *Gilmour* v. *Coats* [1949] W.N. 188 (the case of the contemplative nuns), Charles Russell, K.C., sounded the trumpet in vain before the heaped battlements of the Statute of Elizabeth, but the gates of the citadel of charity, as English law has built it, remained fast barred against his clients, as for three hundred years.

"Those shaken mists a while unsettled, then
Round the half glimpsed turrets slowly washed again."

The victory of Frank Russell, K.C. (as he then was), in *Bourne* v. *Keane* in the last generation was not destined to have its counterpart in this.

SPORTING MATTERS

DESCENDING again from the sublime to the commonplace, from the cloister to the betting-ring, it is impossible to forecast what will be the outcome of *Hill's* case during the time that their seven lordships have taken for consideration. During the argument the indications seemed to suggest that there might well be (if, in this context, one may be allowed the term) a "photo-finish." In their deliberations not the least valuable contribution should come from my Lord Oaksey, who, as a former standing counsel to the Jockey Club, is well versed in the law relating to gaming and wagering. In the Bar Point to Point a couple of months ago his horse "Lohengrin" (shades of Nuremberg!) won a notable and, indeed, unique victory, which I would have given much to witness. Piecing together, as best I may, a variety of hilarious accounts from those who were present, it would seem that the fun of the day started at the first serious jump. One noble animal purchased, it is said, by correspondence by a popular member of the Bar, who first made his personal acquaintance on mounting him for the race, got stuck on the fence. At this point, all, or virtually all, the riders parted company with their mounts, but "Lohengrin," who was not the fastest, or the most heavily backed horse in the field, got away and gained an enormous start. A variety of falls and other mischances, very evenly distributed, kept the fun furious, if not fast, and eventually the favourite made up sufficient lee-way to challenge the advantage of "Lohengrin," who, however, with highly commendable staying power, pounded home to victory in an exciting finish, which had the bookmakers guessing to the last. Lord Oaksey carries on the sporting tradition of his father, Lord Trevethin, whose allegiance was divided between the saddle and the rod. At ninety-one he hooked, played and landed a 36-pound salmon, and his death in the following year, 1936, in full and happy vigour while fishing in the Wye, I, for one, esteem a most enviable end.

RICHARD ROE

REVIEWS

Compulsory Purchase and Compensation. Current Law Guide No. 6. By. R. D. STEWART-BROWN, Barrister-at-Law. 1948. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd. 6s. 6d. net.

This is a handy guide to a somewhat abstruse subject which is becoming more and more important. The procedure for authorising a compulsory purchase, the procedure for assessment of compensation and the principles of compensation are all dealt with, together with the extant sections of the Lands Clauses Consolidation Act, 1845, which are still relevant. There are two useful appendices setting out the main Acts conferring powers of compulsory purchase, the large number of which will probably come as a surprise to many. Those readers, and they will be many, who are brought into contact with compulsory purchase will find this little book most useful to guide them through the various statutory provisions.

Agricultural Law and Tenant Right. By CLEMENT DAVIES, K.C., M.P., and N. E. MUSTOE. Fourth (Enlarged) Edition, by N. E. MUSTOE, M.A., LL.B., of Gray's Inn, Barrister-at-Law, and RAYMOND H. WOOD, F.R.I.C.S. 1949. London: The Estates Gazette, Ltd. 55s. net.

The scope of this useful and reliable work has been extended, its standard of excellence maintained. We do not think that there is any point of agricultural law or, what is often more important, practice, which is left undealt with by the several parts: Administration of the Agricultural Industry (which includes chapters specially devoted to such matters as drainage and water supply, wages, statistics, etc.), contracts of tenancy, compensation under the Agricultural Holdings Act, 1948, arbitration and recovery, the application of the Acts (Agriculture Act, 1947, and Agricultural Holdings Act, 1948, with special chapters expounding such questions as who is landlord, and how "representations" are made and treated, and references made and heard), tenant right, and "miscellaneous."

While it may be considered that the provisions concerning the right to a written agreement in the case of agricultural holdings, set out in chap. x (Rent and Other Tenancy Provisions), are unnecessarily repeated in chap. xxxiii (The Practice of Tenant Right Valuation) many readers will be glad to find, in the same part (Tenant Right) as the last mentioned, such features as a special section (in chap. xxxix—Fertilisers and Feeding Stuffs) on "Statutory Statements." These are the statements provided for by the Fertilisers and Feeding Stuffs Act, 1926, and as their contents may play an important part in the assessment of compensation for short-term new improvements under the Agricultural Holdings Act, 1948, the practitioner is saved the trouble of referring to other books.

The appendices include not only a comprehensive list of the numerous statutory instruments which now contain so much of the law, but also a useful set of precedents.

Wills. By R. W. HOLLAND, O.B.E., M.A., M.Sc., LL.D., of the Middle Temple, Barrister-at-Law. Fifth Edition. 1948. London: Sir Isaac Pitman & Sons, Ltd. 6s. net.

This book is intended to be a complete guide for testators, executors, administrators, and trustees of wills, and the intention has been well carried out. The primary purpose is to provide a book for the man who wishes to have a general knowledge of the law of wills and intestacy before consulting his solicitor, but it is equally useful to the beginner in the study of law. It gives the broad outlines of the subject in simple language, and the intelligent layman or the pupil in the first year of his articles would have to look far to find such a mass of information compressed into such a small and readable compass.

Unfortunately the book contains some bad errors. Pages 45–48 are devoted to district probate registries and to personal applications. In referring to the former, the writer has overlooked the fact that their territorial jurisdiction has been abolished, and that they may deal with applications without reference to the last place of residence of the deceased person. This error places

the book twenty-three years behind the times. In dealing with personal applications, the procedure outlined has been made too involved. Apart from a list of assets and debts, a certificate of death and the original will, a personal applicant need not take any papers to a probate registry, for the necessary documents are prepared by and sworn before an official of the registry. Incidentally, the personal application department of the Principal Probate Registry is not at Somerset House, but at Ingersoll House, Kingsway. The statement that county court registrars have a limited jurisdiction in common form matters is not correct, for that jurisdiction was abolished when the County Courts Act, 1934, came into force.

Despite these and certain other smaller errors, the book achieves its purpose in presenting a readable and concise account of the law of wills and intestacies.

Company Law. By H. GOITEIN, LL.D., of Gray's Inn, Barrister-at-Law. Second Edition. 1949. London: Sir Isaac Pitman and Sons, Ltd. 15s. net.

This book is not, as stated on the inside cover, a detailed guide to Company Law, but it does furnish for someone seeking an introduction to the subject an interesting and easy-to-read explanation of principles and practice. The task of revision consequent upon the passing of the Companies Act, 1948, has not been too well done and a number of inaccuracies have appeared notably in the pages dealing with private companies, where a number of privileges of exempt private companies are listed as being enjoyed by all private companies.

It seems to be the fashion these days to print the text of the 1948 Act in all books on Company Law, but the value of this is questionable except in the case of standard works such as "Buckley" or "Palmer," which set out to be self-contained guides to Company Law as a whole.

For the Defence. By LLOYD PAUL STRYKER. 1949. London: Staples Press, Ltd. 21s. net.

If this book had been written fifty years ago it would have been called "The Life and Times of Thomas Erskine, Lord Chancellor." The subjective title, in the modern fashion, tells one less about the subject but more about the author, who is a distinguished American advocate and to whom Erskine is, above all, the great defender of the principles specially dear to himself, "justice and liberty—the heritage of the Anglo-Saxon." So, after all, between them, the title and the prologue tell us plenty. The work is conceived on a grand scale and the colours are splashed on an enormous canvas in fine style. England and Europe and North America are the background, full of all the turbulent movement of the death of the eighteenth century and the birth of the nineteenth. Quite often the central figure is more than somewhat overshadowed by the colossal scope of the movements and events with which he is brought into relation, but the whole story is told in a manner somewhere between Strachey and Bryant, with such verve, such a sense of significant contrasts and such a feeling for personalities that one would not wish a more sober, detached and limited approach. The whole style of the book carries a constant warning of its all but inevitable weaknesses. It is not objective; its judgments on men and happenings are far too sweeping. Sometimes, as in its picture of Romilly as cold, narrow and unsympathetic, it is definitely unfair. There are plenty of pointers the other way; one need only think of his tragic end and of how Lord Eldon, his eyes filling with tears at the sight of his vacant place at the Bar, exclaimed: "I cannot stay here," and broke up the court in great agitation. In a book of this scope, committed to so much detail, it would be superhuman if there were no points of inaccuracy to note. The author does not seem to have appreciated the difference between a special pleader and a barrister (p. 41), for Buller was already called to the Bar and therefore no longer a special pleader when Erskine became his pupil. As to pupillage itself, he seems to treat it as the traditional form of legal education in the Inns of Court, whereas in Erskine's day it was something of a novelty, replacing the ancient Readings which had fallen into disuse. Again, the unhappy Dr. Dodd was not acquitted (p. 42) but duly hanged. Later in the same chapter Cambridge is said to have been "four coaching hours from London" (p. 44) but, with mid-eighteenth century coach speeds at about seven miles an hour, it would be nearer double. This sort of thing is not very reprehensible and can easily be corrected in a new edition. So can the misprints (for the author has not been very well served by his proof readers), e.g., "Jeffries" for "Jeffreys" (p. 230) and "Senderland" for "Henderland" (p. 232). At p. 3 there is an unfortunate start: "Court of Sessions" is warranted to make any Edinburgh lawyer wince whenever a non-Scot makes that particular slip. And on p. 4 the picture of "Mary Queen of Scots in her successful effort to elude Boswell" cries aloud for an illustration by Max Beerbohm. With these reservations, however, one can confidently say that this book is grandly conceived and powerfully executed.

A Liberal Attorney-General. By GEORGE W. KEETON, M.A., LL.D., of Gray's Inn, Barrister-at-Law. 1949. London: James Nisbet & Co., Ltd. 15s. net.

After a life of intensely energetic political warfare and forensic labour William Snowden Robson, at the age of fifty-eight, entered the House of Lords, which, in the great days of the Liberal assaults upon it, he had once stigmatised as "a triple barrier of privilege, prejudice and pride." By then he was already a sick man. For two years Lord Robson performed the duties of a Lord of Appeal in Ordinary. Then in 1912 a stroke brought about his final retirement from public life. In 1918 he died. As Lord Simon says in the foreword to this biography, he was not among the Immortals but of the "select company of able and useful public servants who were outstanding and influential politicians in their day . . . but in danger of being forgotten after they have gone." In the title of this book the author focuses attention on the two and a half years when Robson was Attorney-General, after being first Solicitor-General, in the administration of 1905, when the Liberals were returned to Parliament with an enormous majority that made them all-powerful. In those years he played a prominent part in the passage through the Commons of no less than thirty measures, all important, and many of the highest importance. His final triumph in his office was his success in the arbitration between Britain and the United States in the South Atlantic Fisheries dispute. The author notes, and it is very interesting, that Robson "attributed the manifest superiority of British advocacy at the arbitration to the separation in England of the two branches of the profession and the consequent specialisation in advocacy by English barristers." Incidentally, the book contains a most interesting and valuable chapter tracing the history of the office of Attorney-General. This life is not pure biography in the sense of being written with complete detachment. Sometimes it might be called a Liberal tract, but the approach being unconcealed, the book is none the worse for that. There are a few slips that might be corrected in future editions, e.g., references to the Government "of 1905–15" and "of 1905–14" on consecutive pages. Sometimes, in the modern way, the construction of sentences is careless, e.g.: "Sir Henry Campbell-Bannerman accepted the invitation to form a Government, and after announcing the Liberal programme at a tremendous meeting at the Albert Hall, Parliament was dissolved." These are matters of detail but, in a broader view, this biography, recalling forgotten but still significant political struggles in the years when the Labour Party was just emerging as a force at Westminster, is full of practical instruction in our own time.

BOOKS RECEIVED

A Supplement to Town and Country Planning Law. By JAMES KEKWICK, of Gray's Inn and the South-Eastern Circuit, Barrister-at-Law. 1949. pp. viii and (with Index) 325. London: Stevens & Sons, Ltd. 25s. net.

An Outline of the New Planning Law. By DESMOND HEAP, LL.M., L.M.T.P.I., Comptroller and City Solicitor to the Corporation of London. 1949. pp. xxii and (with Index) 163. London: Sweet & Maxwell, Ltd. 15s. net.

Jackson's Agricultural Holdings and Tenant Right Valuation. Tenth Edition. By W. HANBURY AGGS, M.A., LL.M., Barrister-at-Law. 1949. pp. xviii and (with Index) 508. London: Sweet & Maxwell, Ltd. 40s. net.

Local Land Charges. By J. F. GARNER, LL.M., Solicitor. 1949. pp. xii and (with Index) 136. London: Shaw & Sons, Ltd. 12s. 6d. net.

The Lynskey Tribunal. By HENRY T. F. RHODES. 1949. pp. 155. Leigh-on-Sea: The Thames Bank Publishing Co., Ltd. 6s. net.

Sutton and Shannon on Contracts. Fourth Edition. By RALPH SUTTON, K.C., M.A., Reader in Common Law to the Council of Legal Education, and N. P. SHANNON, of Gray's Inn, Barrister-at-Law. 1949. pp. lxxvi, 438 and (Index) 29. London: Butterworth & Co. (Publishers), Ltd. 16s. 6d. net.

The Magistrates' Courts. By F. T. GILES, LL.B. 1949. pp. (with Index) 222. Harmondsworth: Penguin Books, Ltd. 1s. 6d. net.

NOTES OF CASES

HOUSE OF LORDS

COMPANY: NATIONALISATION: REDUCTION OF CAPITAL

Scottish Insurance Corporation, Ltd. *v.* Wilsons & Clyde Coal Co., Ltd.

Viscount Maugham, Lord Simonds, Lord Normand and Lord Morton of Henryton. 6th May, 1949

Appeal from the Court of Session, First Division.

The effective business of the respondents, a coal company, was brought to an end by the nationalisation of the coal industry. Their intention to go into voluntary liquidation was not to be carried out until the compensation payable to the company under the Coal Industry Nationalisation Act, 1946, had been assessed. The appellant company, who held some 45 per cent. of the company's first and second preference stock, opposed the coal company's petition for confirmation of the reduction of the company's capital. The Court of Session confirmed the reduction, and the shareholder company now appealed. The House took time for consideration.

VISCOUNT MAUGHAM said that the fact that liquidation was contemplated in the near future should not affect the construction of the terms on which the preference shares had been issued. In considering the question of fairness one could not ignore the fact that the directors still had their powers as such and that they and the shareholders, at any time before liquidation, could exercise their rights under the articles of association. By art. 139 it was contemplated that if the transaction was fair and equitable the preference shareholders might be paid off, with or without their consent. Under art. 141, if the company's undertaking had been sold for cash (and provision made out of a reserve fund or otherwise for payment of debts and liabilities and for paying off the preference share capital) every penny could have been distributed among the holders of ordinary shares. Subject to the payment to the preference shareholders of their capital and their preferential dividends, if any, not yet paid, and subject to discretionary application by the directors under arts. 139 and 140, the whole of the reserve funds and other assets of the company, including the proceeds of sale of the capital assets, were appropriated to the ordinary shareholders and, in that sense, belonged to them to the exclusion of the preference shareholders. If the question of approval by the court fell to be considered in the light of the present position of the company the main argument of unfairness fell to the ground; but he (his lordship) was not prepared to deny that the admitted intention to go into liquidation might be one of the facts which the court ought to consider. If there was a liquidation, arts. 159 and 160 must be construed as a complete statement of the rights of the preference shareholders in the winding up, for the whole of the profits and assets of the company (subject to the payment of the amounts called up and paid on the preference shares) had been appropriated before liquidation to the ordinary shareholders and there was nothing to indicate that on liquidation the preference shareholders' rights would be increased by attributing to them part of the profits and assets appropriated to the ordinary shareholders (see *In re Bridgewater Navigation Co.* [1891] 2 Ch. 317). *In re William Metcalfe & Sons, Ltd.* [1933] Ch. 142, had been wrongly decided. Appreciations in value of capital were appropriated by art. 141 to the ordinary shareholders. The question which arose as to the effect, if any, of s. 25 of the Coal Industry Nationalisation Act, 1946, was due to the difficulty of appreciating its purpose or implications. It did not purport to affect the provisions of the Companies Act or the practice of the courts under it. It would be going too far to say that, in confirming or refusing to confirm a reduction of capital, the court should act as if the Act had not been passed; but those who opposed the reduction, relying on s. 25, had to indicate how it could operate to give the preference shareholders any rights to share in the assets beyond those which they possessed under the articles of association. There was no want of fairness in the proposed reduction of capital. The case was one in which liquidation, when it came, would have been brought about by the action of the Legislature. If there were no reduction of capital the holders of preference shares would not be entitled in a winding up to more than a return of their paid-up capital. They could not claim more on the proposed reduction, or object to being repaid, by means of the reduction, the amounts so paid up which they would receive on the proposed liquidation.

LORD SIMONDS and LORD NORMAND agreed that the appeal should be dismissed.

LORD MORTON OF HENRYTON thought that it should be allowed. Appeal dismissed.

APPEARANCES: *Sir Cyril Radcliffe*, K.C., *Morison*, K.C., and *William Grant* (both of the Scottish Bar) (*Parker, Garrett & Co.*, for *J. & R. A. Robertson*, W.S., Edinburgh); *Cameron*, K.C. (Dean of the Faculty), *J. E. Gordon Thomson*, K.C., and *C. J. D. Shaw* (all of the Scottish Bar) (*Allen & Overy*, for *Shepherd and Wedderburn*, W.S., Edinburgh, and *McGrigor, Donald & Co.*, Glasgow).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL

TRIAL BY JURY: DISCRETION OF JUDGE

Christen *v.* Goodacre and Another

Asquith and Denning, L.JJ. 4th May, 1949

Appeal from Hallett, J., in chambers.

The plaintiff claimed damages for negligence against the first defendant, a house surgeon in King's College Hospital, in surgical treatment of the plaintiff at that hospital, and against the Minister of Health as successor to the board of governors. The Minister in his defence denied that the first defendant was his servant or agent. Master Baker directed that the action should be tried by a judge alone. Hallett, J., directed that the action should be tried by a judge and jury (not special). The Minister appealed.

ASQUITH, L.J., said that it was argued that the judge's exercise of his discretion was wrong for four reasons: first, that, on the face of the pleadings, the case must involve the examination and appraisement of scientific and medical expert evidence and that a jury was not an ideal body for the purpose; secondly, that trial by jury had a tendency to lengthen cases and thereby to increase costs; thirdly, that the case was likely to involve complex disputations of law which it would be difficult for a jury to follow, such as the rights *inter se* of the two defendants, one of whom had brought a third-party claim against the other; and, fourthly, that only one of the three parties, the house surgeon, desired a jury. There was some force in those considerations, but there was no reason to assume that the judge had left any of them out of account. As against that, he was entitled to take into account that it was a valuable protection for a professional man, whose professional reputation was endangered and might be ruined by a charge of negligence, to be able to rely on the necessity for the unanimous verdict of twelve persons before his reputation could be blasted. Taking all the circumstances into account, it was not possible to say that the judge had been guilty of a wrong exercise of his discretion. Cases could be imagined in which it would be manifestly wrong to order a particular mode of trial: *Johnston* v. *Osenton (Charles) & Co.* [1940] 2 K.B. 123, was such a case. This was a different case. This was a matter on which reasonable judges might arrive at different conclusions without its being possible to say that any of them was manifestly wrong. The appeal should be dismissed.

DENNING, L.J., agreed. Appeal dismissed.

APPEARANCES: *R. M. Everett* (*Berrymans*); *Fortune* (*R. A. W Moylan-Jones*) (plaintiff); *Gordon Rogers* (*Hempsons*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

FACTORIES: EMPLOYER'S DELEGATION OF STATUTORY DUTY

Beal *v.* E. Gomme, Ltd.

Tucker, Evershed and Singleton, L.JJ. 5th May, 1949

Appeal from Cassels, J., at Aylesbury assizes.

The plaintiff was an experienced woodworker employed by the defendants. He was injured while working an overhand planing machine because he had not adjusted the guard of the machine properly. The employers left the adjustment of guards to the experienced men whom alone they employed in their factory. By reg. 21 of the Woodworking Machinery Regulations, 1921, "The guards . . . required by these regulations shall be . . . constantly kept in position while the machinery is in motion," and "so adjusted as to enable the work to be carried on without unnecessary risk." Cassels, J., found that the machine was properly equipped with a guard; that the employers had not failed to provide a safe system of working; and that in any event the plaintiff's contributory negligence was the sole cause of his injuries. The plaintiff appealed.

TUCKER, L.J., said that he agreed that the machine was properly bridge-guarded, so that the employers were not in breach of reg. 15, and also that the leaving of the adjustment to the men did not constitute a failure to provide a safe system of working. He could think of no persons better qualified than competent and skilled workmen to make such adjustments. The case depended on the true effect of reg. 21. When the accident happened the guards had not been so adjusted as to enable work to be carried on without unnecessary risk. Therefore, *prima facie*, it would appear that the employers were in breach of reg. 21. It was therefore necessary to consider whether the employers had discharged the onus which lay upon them of proving such an amount of delegation of their duty as would bring them within *Smith* v. *Baveystock & Co.* [1945] 1 All E.R. 278. However experienced and skilful these workmen were, and however reasonable it might be to leave the adjustment of the guards to them, there had not in his opinion been such a real and proper delegation as to comply with what was said in *Vyner* v. *Waldenberg Brothers, Ltd.* [1946] K.B. 50, at p. 55. It was quite clear, however, that the plaintiff had been guilty of negligence which contributed very materially to his own injuries. Therefore, while allowing the appeal, the court apportioned the responsibility for the accident under the Law Reform (Contributory Negligence) Act, 1945, as against the plaintiff at 80 per cent., and as against the employers at 20 per cent.

EVERSHED and SINGLETON, L.JJ., concurred. Appeal allowed *pro tanto*.

APPEARANCES: *Edgedale*, K.C., and *James MacMillan* (*Shaen, Roscoe & Co.*); *Gardiner*, K.C., and *Douglas Lowe* (*Barlow, Lyde & Gilbert*, for *Winter-Taylor, Woodward & Webb, High Wycombe*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

RENT RESTRICTION: TRANSFER OF "BURDEN"

Seaford Court Estates, Ltd. *v.* Asher

Lord Greene, M.R., Asquith and Denning, L.JJ. 1st June, 1949

Appeal and cross-appeal from Bloomsbury County Court.

The defendant was the tenant of a flat in London, which the landlords had let to a previous tenant from September, 1935, to December, 1939, at £175 a year—which was the standard rent. The flat was vacant till September, 1943, when the landlords let it to the defendant at £250 a year. The lease of 1935 contained no covenants by the landlords to perform services. By the lease of 1943 they covenanted, *inter alia*, to repair the exterior of the house, to remove refuse, and to provide hot water. The county court judge, on the landlords' claim for one quarter's rent of £62 10s. on the basis of £250 a year, gave them judgment for £43 15s. on the basis of the standard rent of £175. He upheld the tenant's counter-claim for £112 10s. rent overpaid, and gave judgment for him for the balance—£68 odd. The judge found that, while the landlords under the earlier lease had not assumed a legal obligation to provide any of the services referred to, they did, *de facto* and as an act of grace, provide all of them. By s. 2 (3) of the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920, "... any increase of rent in respect of any transfer to a landlord of any burden or liability previously borne by the tenant where, as the result of such transfer, the terms on which any dwelling-house is held are on the whole not less favourable to the tenant than the previous terms, shall be deemed not to be an increase of rent for the purposes of this Act." (*Cur. adv. vult.*)

LORD GREENE said that the true interpretation of s. 2 (3) appeared to him to have been left by the authorities in some obscurity. The word "terms" in that subsection meant the provisions in the lease which were binding in law. It related to legal rights or obligations and not to mere *de facto* advantages or handicaps. It was not necessary, in order that an increase of rent might be "in respect of" a transfer of burden within the meaning of the subsection, that the landlord, in increasing the rent, should consciously relate that increase to the burden which he was assuming; it was sufficient to render the increase in respect of the transfer that there should be such an increase, that the increase should be commensurate with the quantum of the burden transferred, and that it should be substantially contemporary with its transfer. The word "burden" in the subsection, in contradistinction to the word "liability," which meant a legal obligation, included something like hot water, which the tenant, as such, reasonably desired to have provided for his benefit and for the provision of which he had no legal right of recourse against anyone else. Accordingly the assumption by a landlord of a legal liability, not previously provided for in the lease, to provide the tenant with such a service as hot water was the "transfer of a burden" within the meaning of the subsection for which a commensurate increase in the rent above the standard rent was permissible. There was, moreover, no less such a "transfer of burden" within the meaning of the subsection because the landlord previously in fact supplied the service without being legally obliged to do so. He agreed with the judgments of Asquith and Denning, L.JJ., and with the order which the former would state.

ASQUITH, L.J., said that the word "burden" included a contingent burden. The tenant here was during the currency of the earlier lease under the contingent burden of providing the services himself in the event that the landlord should decide to cease providing them. By the elimination of that risk in 1943 the tenant was emancipated from a disadvantage that could, without abuse of language, be described as a "burden," and one which, but for what happened in 1943, would very likely, from being contingent, have become actual owing to the rise in fuel prices. In consequence of what then happened the tenant shed that burden, which settled on the shoulders of the landlords having in its transit assumed the hard lineaments of a legally enforceable obligation. *Property Holding Co., Ltd.* v. *Clark* [1948] 1 K.B. 630, if it decided otherwise on this point, was inconsistent with *Winchester Court, Ltd.* v. *Miller* [1944] K.B. 734, and the court preferred to follow the latter case. The landlords were therefore entitled to succeed in their claim as to £62 10s. The tenant's counter-claim should fail, except in so far as the county court judge might, on reference of the matter back to him, decide that the burden transferred was over-valued at £75 a year, the difference between the new rent and the old. In that event the judge would value the landlords' claim for rent for a quarter at some intermediate figure between £43 15s. and £62 10s.

DENNING, L.J., agreeing, said that, whenever a statute came up for consideration, it must be remembered that it was not within human powers to foresee the manifold sets of facts which might arise; and, even if it were, it was not possible to provide for them in terms free from all ambiguity. That was where the draftsmen of Acts of Parliament had often been unfairly criticised: A judge, believing himself to be fettered by the supposed rule that he must look to the language and nothing else, lamented that the draftsmen had not provided for this or that, or had been guilty of some other ambiguity. It would certainly save the judges trouble if Acts of Parliament were drafted with divine prescience and perfect clarity; but in the absence of it, when a defect appeared, a judge could not simply fold his hands and blame the draftsman. He must set to work on the constructive task of finding the intention of Parliament, and he must do that not only from the language of the statute but also from a consideration of the social conditions which gave rise to it and of the mischief which it was passed to remedy; and he must supplement the written word so as to give "force and life" to the intention of the Legislature. That was clearly laid down by the resolution of the judges in *Heydon's* case (see Lord Coke's Reports, pt. 3, p. 7*b*), and it was the safest guide to-day. A judge should ask himself the question: if the makers of the Act had themselves come across that ruck in the texture of it, how would they have straightened it out? He must then do as they would have done. A judge must not alter the material of which it was woven, but he could and should iron out the creases. Appeal allowed. Cross-appeal dismissed in part. Leave to appeal to the House of Lords.

APPEARANCES: *C. L. Henderson*, K.C., and *James MacMillan* and *N. Richards* (*Griffinhoofe & Brewster*); *J. F. E. Stephenson* (*Kennedy, Ponsonby & Prideaux*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

KING'S BENCH DIVISION

DIVISIONAL COURT

ROAD TRAFFIC: TRACTOR: AGRICULTURAL PURPOSES: "SPECIAL REASONS"

Henderson *v.* Robson and Others

Lord Goddard, C.J., Birkett and Lynskey, JJ.

27th April, 1949

Case stated by Chester County Justices.

The defendants, who were farmers, owned a motor tractor for which they had taken out a licence costing only 5s. and covering its use only "for hauling agricultural produce of, or articles required for, any farm . . ." under s. 8 of the Finance Act, 1943. The insurance policy covered use of the tractor "for agricultural purposes." The tractor was stopped by a police officer when it was being used to haul a trailer containing a show pony to the local agricultural show. The pony was entered in show and jumping classes, and was owned by the defendants in connection

with their riding school. The defendants were charged with contravening (1) s. 14 of the Finance Act, 1922, by using the tractor for a purpose to licence which a higher rate of duty was payable than they had paid, and (2) s. 35 (1) of the Road Traffic Act, 1930, by using the tractor without the necessary third-party-risks policy being in force. At the hearing before the justices a letter was produced, without objection by the prosecutor, in which the insurers stated that had any accident occurred while the tractor was being used as described, they would have indemnified the defendant policy-holders. The justices dismissed the information and the prosecutor appealed.

LORD GODDARD, C.J., said that the use being made of the tractor was clearly not within the use specified in s. 8 of the Act of 1943. The pony was not, though a carthorse might have been, an "article required for any farm." The defendants should accordingly have been convicted of contravening s. 14 of the Act of 1922. As for the insurance point, the court could not decide, without seeing the policy, whether the words "agricultural purposes" used in it covered, unlike the words of s. 8 of the Act of 1943, the conveying of the pony to the show. It would not, however, direct the justices to convict the defendants of contravening s. 35 (1) of the Act of 1930, for they (the justices) had accepted the insurers' statement that they would have accepted liability. Moreover, the case would in any event have been one for treatment under the Probation of Offenders Act; and, further, there would have been "special reasons" for not imposing disqualification from driving under s. 35 (2) of the Act of 1930.

BIRKETT and LYNSKEY, JJ., agreed. Appeal allowed in part.

APPEARANCES: *Heathcote-Williams*, K.C. (*Gregory, Rowcliffe and Co.*, for *Geoffrey C. Scrimgeour*, Chester); the defendants did not appear and were not represented.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY

SHIPPING: ASSESSMENT OF SALVAGE AWARD

The *Queen Elizabeth*

Willmer, J. (with Trinity Masters). 17th June, 1949

Consolidated action.

Three separate groups of tug-owners claimed salvage from Cunard White Star, Limited, for services rendered by tugs to their steamship the *Queen Elizabeth*, her cargo, and freight in Southampton Water in April, 1947, when she stranded on the Brambles, off the Bourne Gap Buoy: (1) the Admiralty Commissioners and the masters and crews of six of H.M. tugs; (2) two salvage companies as the owners, and the masters and crews of two salvage tugs; and (3) the owners, masters and crews of four Southampton steam tugs.

WILLMER, J., said that it had been agreed that the sound value of the *Queen Elizabeth* was £6,000,000, less £17,000 for repairs, making the salved value £5,983,000. The cargo was valued at £225,000. The total value was therefore £6,208,000. It was clear that the *Queen Elizabeth*, by her own efforts to lighten herself, had brought herself very near to flotation point. Before she had done that the efforts of the tugs were useless. They were nevertheless entitled to be paid for that work. None of the plaintiffs had gone the length of alleging that there was a danger of total loss of the vessel, but they had all argued that such a risk could not altogether be left out of account, remote though it was. The *Queen Elizabeth* was not built to take the ground in the way which had occurred. She and the *Queen Mary* were the largest ships which had been constructed in the history of mankind, and it was to be doubted whether even the most knowledgeable were ready to state what results might be expected from strains and stresses of the kind to which the *Queen Elizabeth* had been subjected. The case must be approached on the basis that there was a remote chance that that extremely valuable property might have been totally lost. There had never been before the court, so far as he knew, any case involving anything approaching the value concerned here. He had been requested to make a lump sum award in respect of the four Southampton tugs, and he awarded them £12,000. Requested to make an individual award in respect of each of the Admiralty tugs, he had awarded three of them £2,500 each, one £3,500, and two of them £2,750 each. To the two salvage vessels the salvage work was bread and butter, whereas to the other vessels it was jam, and he would award those two vessels £15,000. Judgment for the plaintiffs for £43,500.

APPEARANCES: *Carpmael*, K.C., and *Peter Bucknill* (*Treasury Solicitor*); *Sir William McNair*, K.C., and *Vere Hunt*; *Naisby*, K.C., and *H. E. G. Browning* (*Thomas Cooper & Co.*); *Hayward*, K.C., and *Porges* (*Hill, Dickinson & Co.*).

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

SURVEY OF THE WEEK

STATUTORY INSTRUMENTS

Rubber Reclamation Wages Council (Great Britain) Wages Regulation Order, 1949. (S.I. 1949 No. 1063.)

Pensions (Polish Forces) Scheme, 1949. (S.I. 1949 No. 1058.)

Prison Rules, 1949. (S.I. 1949 No. 1073.)

These Rules, which are made under the Criminal Justice Act, 1948, govern the whole conduct of prisons and treatment of prisoners. It is noteworthy that among the General Principles of Discipline laid down are these: "Discipline and order shall be maintained with firmness, but with no more restriction than is required for safe custody and well ordered community life" and "At all times the treatment of prisoners shall be such as to encourage their self-respect and a sense of personal responsibility."

Trading with the Enemy (Custodian) Order, 1949. (S.I. 1949 No. 1083.)

This Order is made under the Trading with the Enemy Act, 1939. "The Enemy" includes any individual residing in Germany or Japan, and any body of persons incorporated under the law of Germany and Japan. The Order vests in the Custodian of Enemy Property the right to receive any payment under s. 64 of the Town and Country Planning Act, 1947, in respect of an interest in land the owner of which was an enemy on 1st July, 1948.

Road Haulage Wages Council Wages Regulation (No. 3) Order, 1949. (S.I. 1949 No. 1085.)

National Research Development Corporation Regulations, 1949. (S.I. 1949 No. 1097.)

These Regulations, which came into force on 16th June, 1949, are made under the Development of Inventions Act, 1948. They deal with the appointment of members of the National Research Development Corporation, and their tenure and vacation of office, mode of entering into contracts, and with proof of documents purporting to be made by the Corporation, etc.

Landlord and Tenant (Rent Control) Regulations, 1949. (S.I. 1949 No. 1096.)

These Regulations prescribe the details to be entered in the local authorities' register of determinations under the Act, and deal with the procedure for making and hearing applications to the tribunals. See p. 411, *ante*.

PARLIAMENTARY PUBLICATIONS

Tenure and Rents of Business Premises. Interim Report of the Leasehold Committee under the chairmanship of Lord Uthwatt (Command Papers, Session 1948–49, No. 77–78).

This Report was more fully reviewed in our last issue at p. 403. The Report deals only with that part of the Committee's terms of reference which relates to the question whether business premises should have security of tenure similar to that conferred upon dwelling-houses by the Rent Restriction Acts, and whether their rents should be controlled. Briefly, the Report recommends a system of security of tenure, but does not recommend control of the rents of business premises generally.

Landlord and Tenant (Rent Control) Act, 1949. (Public General Acts 12 & 13 Geo. 6, ch. 40.)

Marriage Bill (House of Lords Bill, Session 1948–49, No. 113.)

Consolidation of Enactments (Procedure) Act, 1949. Consolidation of Enactments Relating to Marriage. Memorandum (House of Lords Papers, Session 1946–49, No. 112).

The Marriage Bill is the first Bill to be introduced under the new consolidation procedure. The Memorandum sets out a number of minor corrections and amendments to earlier legislation from the Marriage Act, 1823, to the Marriage (Members of His Majesty's Forces) Act, 1941. It is also proposed to enable marriage forms and certificates to be such as the Registrar-General may prescribe with the approval of the Minister of Health.

NON-PARLIAMENTARY PUBLICATIONS

Ministry of Town and Country Planning. Selected Appeal Decisions Bulletin No. 8. March, 1949.

Decisions of particular interest in this Bulletin are: (1) The refusal of permission to rebuild three houses destroyed by enemy action on grounds of excessive density; permission was given for

two houses or four flats to be built; (2) An appeal brought under s. 10 (5) of the 1932 Act fell to be determined under the 1947 Act. The appellants wished to take over new premises at present used for manufacture of printing ink and use them for the manufacture of substitute varnish. The Council had refused planning permission on the ground that there were already a number of obnoxious undertakings in the district. The Minister held that the proposed change of user was merely to another user in the same class under the Town and Country Planning (Use Classes) Order, 1948, and hence no planning permission was needed.

Law Officers' Department. Trial of Major German War Criminals.

Proceedings of the International Military Tribunal sitting at Nuremberg, Germany. Part 20. 29th July to 8th August, 1946.

NOTES AND NEWS

Professional Announcements

Mr. M. B. ELLIOTT, LL.B., of Ripon, is to enter into partnership in the firm of Elliott & Slater, Solicitors, of Sheffield, on 1st September next.

Mr. ROBERT SPENCE WATSON POLLARD, J.P., L.A.M.T.P.I., practising as Pollard, Cooper & Thorowgood, has joined in partnership with Mr. GEORGE MARTIN, LL.D., and Mr. THOMAS STEPHEN STALLABRAS. The new firm will be known as Pollard, Stallabras & George Martin, and will carry on business at 17 Victoria Street, London, S.W.1.

Honours and Appointments

The King has approved that the honour of Knighthood be conferred upon Mr. HAROLD OTTO DANCKWERTS on his appointment as a judge of the High Court of Justice.

The King has approved the appointment of Sir FRANCIS RAYMOND EVERSHED, Master of the Rolls and Keeper of the Records, as chairman of the Royal Commission on Historical Manuscripts in succession to Lord Greene, and the appointment of LORD GREENE as an additional member of the Commission.

Mr. R. H. BLUNDELL has been appointed a metropolitan magistrate and will sit at Bow Street in place of Mr. A. A. Pereira, who is transferred to Greenwich and Woolwich Courts. Mr. Blundell became Recorder of Colchester in 1947 and was called to the Bar in 1924.

Mr. J. P. EDDY, K.C., has been appointed stipendiary magistrate of East and West Ham. Mr. Eddy has been Recorder of West Ham since 1936 and was formerly a High Court Judge in Madras.

Sir REGINALD TAAFE SHARPE has been appointed a Commissioner of Assize on the Western Circuit.

Mr. W. J. BROWN, solicitor, has been appointed to the Committee on Cruelty to Wild Animals set up by the Home Secretary under the chairmanship of Mr. John Scott Henderson, K.C.

Mr. S. J. FRANCIS, assistant solicitor to Norwich Corporation, has been appointed assistant solicitor to Eastbourne Corporation.

Mr. T. D. HOLCROFT, second assistant solicitor to Stoke-on-Trent Corporation, has been appointed an assistant prosecuting solicitor to the City of Birmingham Corporation.

Mr. K. A. HORNE, assistant solicitor to Northampton Corporation, has been appointed Deputy Town Clerk of Taunton.

Mr. R. S. W. POLLARD, solicitor, of London, has been appointed Employers' Secretary of the North Metropolitan District Council for Local Authorities Non-Trading Services (Manual Workers).

The Colonial Office announces the following appointments: Mr. J. G. A. BICKFORD, Resident Magistrate, Nyasaland; Mr. J. E. BOUCAUD, Crown Solicitor, Trinidad; Mr. C. H. BUTTERFIELD, Solicitor-General, Singapore; Mr. R. E. L. DRESCHFIELD, Solicitor-General, Uganda; Mr. S. A. HUGGINS, Assistant Crown Solicitor, Trinidad; Mr. C. de L. INNISS, Solicitor-General, Tanganyika; Mr. J. B. PINE, Stipendiary Magistrate, Gibraltar.

Personal Notes

Mr. W. R. Howard, Metropolitan magistrate, has retired. He was stipendiary magistrate for East Ham from 1935 until 1939, when he was appointed Metropolitan magistrate at Greenwich and Woolwich Courts, where he sat until his retirement.

Mr. Cledwyn Hughes, solicitor and acting town clerk of Holyhead, was married on 17th June, at Chester, to Miss Jean Beatrice Hughes, of Holyhead.

Mr. Leonard Jaques, solicitor, of Nelson, was married recently to Miss Peggy Eccles, of Cornhill-on-Tweed, Northumberland.

Mr. Denis Richard Ledward, London solicitor and clerk to the Worshipful Company of Brewers, was married on 10th June, at St. Martin-in-the-Fields, to Miss Avril Monica Crabtree, of Scarborough.

Mr. R. D. Marten, solicitor, of Croydon, has been elected president of Croydon Rotary Club.

Mr. R. H. L. Mott, solicitor, of Nottingham, and his wife this week celebrated their golden wedding.

Mr. J. C. Moult, solicitor, of Stockport, was married on 2nd June to Miss Alison Bailey, of Stockport.

Mr. W. Rawnsley, chief clerk to Burnley County Court for twenty-three years, is retiring after thirty-seven years' service at Burnley and Halifax.

Wills and Bequests

Mr. H. A. Easton, solicitor, of Hampstead, late member of the Court of Common Council of the City of London, left £45,814, net personalty £44,266.

Mr. G. R. Sills, solicitor, of Lincoln, left £30,968, net personalty £30,092. Amongst his bequests Mr. Sills left £50 to be distributed among clerks in his employ at the date of his death and one retired clerk.

OBITUARY

SIR DAWSON BATES

The Rt. Hon. Sir Dawson Bates, Bt., O.B.E., D.L., died on 9th June, aged 72. Sir Dawson was Home Secretary in the Northern Ireland Government from 1921 until his retirement in 1943. He was admitted a solicitor in 1900.

MR. T. S. CURTIS

Mr. T. S. Curtis, City solicitor, died on 11th June, aged 92. He was admitted in 1878.

MR. C. H. DIGBY-SEYMOUR

Mr. C. H. Digby-Seymour, Town Clerk of Worcester since 1931, died on 13th June, aged 53. He was admitted in 1920.

MR. W. FISHER

Mr. William Fisher, solicitor, of Hexham, for fifty-four years clerk to Hexham Abbey Vestry, died on 12th June. He was admitted in 1893.

MR. A. M. JAMES

Mr. Arthur M. James, solicitor, of Swansea, died on 15th June, aged 77. He was admitted in 1898.

MR. R. J. LANHAM

Mr. R. J. Lanham, former City solicitor, died on 11th June aged 89.

MR. W. R. C. MURDOCH

Mr. W. R. C. Murdoch, solicitor, of Glasgow, died on 30th May aged 70.

"THE SOLICITORS' JOURNAL"

Editorial, Publishing and Advertisement Offices: 88–90, Chancery Lane, London, W.C.2. Telephone: Holborn 1403.

Annual Subscription: £3 inclusive (payable yearly, half yearly or quarterly in advance).

Advertisements must be received first post Tuesday.

Contributions are cordially invited and should be accompanied by the name and address of the author (not necessarily for publication).

The Copyright of all articles appearing in THE SOLICITORS' JOURNAL is reserved.